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No. 1782

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

(In 3 Volumes.)

SOLOMON RIPINSKY,

Appellant,

vs.

G. W. HINCHMAN, WILLIAM HOLGATE, JOHN G. MORRISON, J. A. NETTLES, CORTEZ FORD, TOM VALEUR, R. M. ODELL, D. BUTRICH, E. J. BERGER, IDA JOHNSON, M. E. HANDY, FRED HANDY, G. C. DE HAVEN, TIM CREEDON, BENJAMIN A. MAHAN, THOMAS DRYDEN, ED. FAY, JAMES FAY, H. FAY, W. W. WARNE, THOMAS VOGEL, C. BJORNSTAD, H. RAPPOLT, KAREN BJORNSTAD, M. V. McINTOSH, MARY V. McINTOSH, JESSE CRAIG, E. A. ADAMS, J. W. MARTIN, A. J. DENNERLINE, S. J. WEITZMAN, PETER JOHNSON, MRS. KATE KABLER, and V. READE,

Appellees.

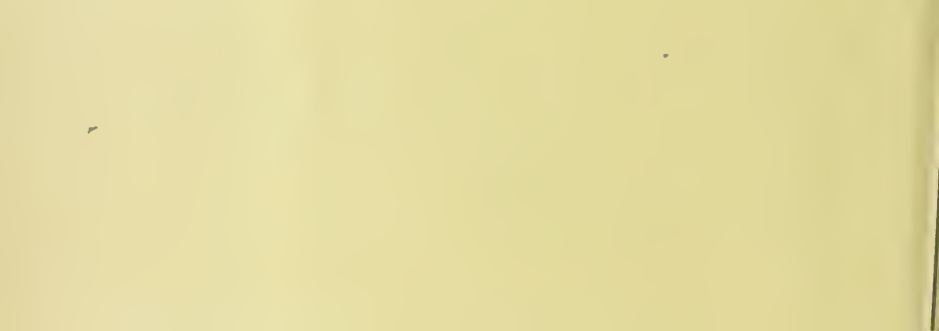
VOLUME 1.

(Pages 1 to 336, Inclusive.)

Upon Appeal from the United States District Court for the
District of Alaska, Division No. 1.

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FEB 21 1919

Accounts of John Green
Account of 1791



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names of Attorneys of Record.

L. P. SHACKLEFORD, Attorney for Plaintiffs and Appellees.

MALONY & COBB and R. W. JENNINGS, Attorneys for Defendant and Appellant.

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. —A.

G. W. HINCHMAN, WILLIAM HOLGATE, JOHN G. MORRISON, J. A. NETTLES, CORTEZ FORD, TOM VALEUR, R. M. ODELL, D. BUTRICH, E. J. BERGER, IDA JOHNSON, M. E. HANDY, FRED HANDY, G. C. DE HAVEN, TIM CREEDON, BENJAMIN A. MAHAN, THOMAS DRYDEN, ED FAY, JAMES FAY, H. FAY, W. W. WARNE, THOMAS VOGEL, C. BJORNSTAD, H. RAPPOLT, KAREN BJORNSTAD, M. V. McINTOSH, MARY V. McINTOSH, JESSE CRAIG, E. A. ADAMS, J. W. MARTIN, A. J. DENNERLINE, S. J. WEITZMAN, PETER JOHNSON, MRS. KATE KABLER and V. READE,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Second Amended Complaint.

Come now the plaintiffs above named, and file this their amended complaint herein, and complain of the defendant, and allege:

I.

That the plaintiff above named, and each of them, are citizens of the United States and residents and occupants of property in the town of Haines, in the District of Alaska, and residents of and in occupancy of lands embraced in Survey No. 573, at Haines, Alaska, and that all of the land embraced in the said United States Survey No. 573, situated in the town of Haines, Alaska, is more particularly described as follows, to wit:

Beginning at Cor. No. 1, Ripinsky's house, from which point U. S. L. M. No. — bears S. 6° 45' W., 2.64 chains distant, witness Cor. bears W. 30 links, a stone marked S. 573 W. C. 1; thence from true Cor. N. 14° 20' E., along mean high-water mark of Portage Cove, 2.30 chains to Cor. No. 2, not set, witness Cor. bears W. 30 links, a stone marked S. 573 W. C. 2; thence from true Cor. W. 9.10 chs. to Cor. No. 3, an iron pipe 3 inches in dia. marked S. 573 C. 3; thence N. 3.16 chs. to Cor. No. 4, a granite stone marked S. 573 C. 4; thence W. 31.27 chs. to Cor. No. 5, a stone marked S. 573 C. 5; thence S. 1.68 chs. to Cor. No. 6, a stone marked S. 573 C. 6; thence S. 80° 54' E. along north line of Presbyterian Mission, 34.00 chs. to Cor. No. 7, an iron pipe marked S. 573 C. 7; thence N. 1.67 chs. to

Cor. No. 8, an iron pipe marked S. 573 C. 8; thence E. 6.23 chs. to Cor. No. 1, the place of beginning. Magnetic variation at all corners $28^{\circ} 30'$ east; containing 15.40 acres, is within the exterior boundaries of the town of Haines, in the District of Alaska.

II.

That all of the said lands embraced in said Survey No. 573, and described in the last preceding paragraph, have been ever since December, 1897, and now are, in actual possession and occupation in good faith of the plaintiffs herein as hereinafter stated; that all of said lands embraced in said survey constitute the principal business section of the town of Haines, Alaska, and that the plaintiffs now are occupying in good faith, and have at all times been occupying in good faith, said lands since the said month of December, 1897, for business and residential purposes; that these plaintiffs have constructed buildings, such as stores, hotels, residences, etc., in value exceeding the sum of fifty thousand dollars (\$50,000.00); that annexed hereto, and marked Exhibit "A," and made a part hereof is a map of the portion of the townsite of Haines, Alaska, included within the exterior boundaries of the said U. S. Survey No. 573, and the plaintiffs herein claim that certain street fifty feet wide, and shown on said map and known as Main street, and those certain streets shown on the said map 75 feet wide, and known as Second Avenue, Third Avenue, Fourth Avenue, Fifth Avenue and Sixth Avenue, respectively, and also that portion at Dalton street as shown within the exterior boundaries of said survey, as

public streets and rights of way, and also claim that certain alley way running between Dalton and Main streets, and shown on said map and being 20 feet wide, as a public right of way, or alley, which said streets and alleys are claimed and used in common by all of the plaintiffs herein and by all of the residents of Haines, Alaska; that the remainder of the ground so set forth in said map and marked thereon by metes and bounds and by numbered parcels is claimed and occupied in severalty by the various plaintiffs, respectively, as on said map shown and indicated, as follows, to wit:

Block 1: Parcel 1, J. G. Morrison; parcel 2, Nettles & Ford; parcel 3, S. J. Weitzman; parcel 4, H. Fay; parcel 5, Sol Ripinsky; parcel 6, J. W. Martin; parcel 7, B. A. Mahan; parcel 8, M. V. McIntosh; parcel 9, J. W. Martin; parcel 10, James Fay; parcel 11, D. Butrich; parcel 12, R. L. Weitzman; parcel 13, R. L. Weitzman; parcel 14, E. A. Adams; parcel 15, Fred Handy; parcel 16, J. G. Morrison; parcel 17, G. C. De Haven and Tim Creeden.

Block 2: Parcel 1, Thomas Vogel; parcel 2, T. D. Valeur; parcel 3, Jim Fay; parcel 4, Ida Johnson; parcel 5, S. J. Weitzman; parcel 6, M. E. Handy, parcel 7, W. W. Warne; parcel 8, W. W. Warne; parcel 9, W. W. Warne; parcel 10, W. W. Warne, parcel 11, W. W. Warne; parcel 12, Karen Bjornstad; parcel 13, Karen Bjornstad; parcel 14, Karen Bjornstad.

Block 3: Parcel 1, Mary V. McIntosh; parcel 2, Wm. Bryson; parcel 3, H. Fay; parcel 4, E. J. Berger; parcel 5, Karen Bjornstad; parcel 6, Henry Rappolt; parcel 7, Geo. Hinchman; parcel 8, Geo.

Hinchman; parcel 9, C. Bjornstad; parcel 10, H. Conger; parcel 11, Wm. Holgate; parcel 12, Wm. Holgate.

Block 4: Parcel 1, Kate Kabler; parcel 3, H. Fay; parcel 4, Pete Johnson; parcel 5, Pete Johnson; parcel 6, Pete Johnson.

Block 5: Parcel 1, A. J. Dennerline; parcel 2, M. E. Handy; parcel 3, Ed Fay; parcel 4, John Paddock; parcel 5, Thomas Dryden; parcel 6, Mrs. Jesse Craig.

Block 6: Parcel 1, Jo Stubbler; parcel 2, A. J. Dennerline.

III.

That the defendant, Solomon Ripinsky, claims an interest or estate in and to said land embraced within the said survey No. 573 adverse to these plaintiffs, but that the said defendant, Solomon Ripinsky, has never occupied any of said lands within the said survey No. 573 except two small parcels—one 25x50 feet, which he acquired by purchase from one H. Fay, and another 100x150 feet which he occupies as a residence, both of which parcels of land are marked and described on Exhibit “A” hereto attached, and that said defendant, Solomon Ripinsky, has no right, title or interest in or to any of the remaining portion of said tract of land hereinbefore described.

Wherefore, plaintiffs pray that a decree of this Court be entered herein adjudging and decreeing,

First: That the plaintiffs herein are the owners of, in the possession of and entitled to the possession of all the lands hereinbefore described, save and ex-

cept two small portions hereinbefore described as being in the actual possession of the defendant herein.

Second: That the defendant has no right, title or interest in or to any of the premises described in the complaint herein, except said two small portions hereinbefore described.

Third: That plaintiffs have and recover of and from the defendant their costs and disbursements herein, for such other and further relief as to the *Court seem* meet and equitable.

SHACKLEFORD & LYONS,
Attorneys for Plaintiffs.

United States of America,
District of Alaska,—ss.

I, Lewis P. Shackelford, being duly sworn on oath say: That I am one of the attorneys for the plaintiffs in the above-entitled action; that I have read the foregoing Amended Complaint and know the contents thereof and believe the same to be true; that I make this verification because all of the material allegations of said complaint are within my personal knowledge.

LEWIS P. SHACKLEFORD.

Subscribed and sworn to before me this 11th day of May, A. D. 1907.

[Notarial Seal]

T. R. LYONS,
Notary Public for Alaska.

Due service of a copy of the within is admitted this 11th day of May, 1907.

R. W. JENNINGS,
Attorney for Deft.

[Endorsed]: Original. No. 547-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. George Hinchman et al., Plaintiffs, vs. Solomon Ripinsky, Defendant. Second Amended Complaint. Filed May 11, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Shackleford & Lyons, Attorneys for Plaintiffs. Office: Juneau, Alaska.

[Demurrer to the Second Amended Complaint.]

*In the District Court for Alaska, Division No. One,
at Juneau.*

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOL. RIPINSKI,

Defendant.

Defendant demurs to the Second Amended Complaint, as interlined and for grounds of demurrer alleges:

That several causes of action have been improperly united.

R. W. JENNINGS,
MALONY & COBB,
Attorneys for Defendant.

Due service of the within Demurrer is admitted this 31st day of May, 1907.

SHACKLEFORD & LYONS,
Attorneys for Plaintiffs.

[Endorsed] No. 547-A. In the United States District Court for the District of Alaska, Division No. One, Juneau. Hinchman et al., Plaintiff, vs. Ripinski, Defendant. Demurrer. Filed May 31, 1907. C. C. Page, Clerk. By E. W. Pettit, Ass't. R. W. Jennings, Malony & Cobb, Attorneys for Defdnt. Juneau, Alaska.

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 547-A.

G. W. HINCHMAN, et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Order Overruling Demurrer [to the Amended Complaint].

Now on this day this matter came on again for hearing on the demurrer of the defendant to the amended complaint filed herein, and after argument had by the respective counsel herein, and the Court being fully advised in the premises, overrules said demurrer and defendant is given one week in which to answer.

Done in open court Tuesday, June 4, 1907.

JAMES WICKERSHAM,

Judge.

In the District Court for Alaska, Division No. 1, at Juneau.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOL RIPINSKI,

Defendant.

Answer [to the Second Amended Complaint].

For answer to the second amended complaint, defendant

I.

Denies each and every allegation in said complaint contained except the allegation contained in the third paragraph before the word "but," in the third line thereof.

And for an affirmative defense and by way of new matter defendant alleges:

II.

That for a long time prior to August 1, 1897, defendant's grantors were the owners, and in possession, of all the land now embraced in U. S. Survey 573 as mentioned in the said complaint, and entitled to possession of same by virtue of prior claim, occupancy and improvement thereof.

III.

That prior to said first day of August, 1897, said grantors had conveyed to defendant all their right, title and interest in and to said tract, and that prior to said date defendant had gone into actual possession and occupancy of said tract and remained in actual, open, notorious and exclusive possession and occupancy thereof as a home until the time mentioned in the next paragraph hereof; and by reason thereof defendant was the owner thereof as against all persons except the United States, and became and is entitled to the same as a homestead, and to enter the same under the acts of Congress extending the homestead laws to Alaska.

IV.

That on or about August 1, 1897, and while defendant was so the owner of, in possession, and entitled to the possession of the tract aforesaid, plaintiffs and their grantors wrongfully and unlawfully and with force and violence, against the will and consent of defendant, and in total disregard of his rights in the premises, entered on and upon said tract, and wrongfully and unlawfully wrested from him possession of certain portions thereof, as in said complaint described.

V.

That by virtue of the said possession of and conveyance from defendant's grantors, and by virtue of defendant's own possession and occupancy, as aforesaid, defendant is the owner and entitled to the possession of said tract.

VI.

That plaintiffs have not, either jointly or severally, any right, title or interest in or to said land, or any part thereof.

Wherefore, defendant prays that the complaint herein be dismissed, and that he may recover his costs and disbursements.

R. W. JENNINGS,
MALONY & COBB,

Attorneys for Defendant.

Sol. Ripinsky, being sworn, says he is defendant in above-entitled action; that he has read the foregoing answer, knows the contents thereof and the same are true.

SOL. RIPINSKY.

Subscribed and sworn to before me July 8/07.

R. W. JENNINGS,
Notary Public.

Service of the above and foregoing Answer admitted this 15 day of June, 1907, and verification waived until day of trial.

T. R. LYONS,
Attorneys for —————.

[Endorsed]: Original No. 547-A. In the District Court for Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plaintiffs, vs. Sol. Ripinski, Defendant. Answer. Filed Jun. 15, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. R. W. Jennings and Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

*In the District Court for the District of Alaska,
Division No. 1.*

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOL. RIPINSKY,

Defendant.

Reply.

Come now the plaintiffs and for reply to defendant's answer on file herein, deny and allege as follows:

I.

Referring to paragraph II of said answer, on page one thereof, plaintiffs deny each and every allegation therein contained.

II.

Referring to paragraph III on pages one and two of said answer, plaintiffs deny each and every allegation therein contained.

III.

Referring to paragraph IV, on page two of said answer, plaintiffs deny each and every allegation therein contained.

IV.

Referring to paragraph V of said answer, plaintiffs deny each and every allegation therein contained.

V.

Referring to paragraph VI of said answer, plaintiffs deny each and every allegation therein contained.

Wherefore, plaintiffs demand judgment against defendant as prayed for in the complaint herein.

SHACKLEFORD & LYONS,

Attorneys for Plaintiffs.

United States of America,
District of Alaska,—ss.

I, S. J. Weitzman, being first duly sworn, on oath say: That I am one of the plaintiffs in the above-entitled action; that I have read the foregoing Reply and know the contents thereof, and believe the same to be true; that I make this verification because

S. J. WEITZMAN.

Subscribed and sworn to before me this 8th day of July, 1907.

[Notarial Seal]

T. R. LYONS,

Notary Public for Alaska.

Service of the above reply accepted June 19, 1907.

R. W. JENNINGS.

[Endorsement]: Original No. 547-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plaintiffs, vs. Sol. Ripinsky, Defendant. Reply. Filed Jun. 19, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Shackelford & Lyons, Attorneys for Plaintiffs. Office: Juneau, Alaska.

*In the District Court for the District of Alaska,
Division No. 1.*

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOL. RIPINSKY,

Defendant.

Order of Reference.

Ordered that this cause be referred to L. R. Gillette, attorney of this Court and a notary public, to take and report the testimony; said L. R. Gillette is to begin taking testimony herein on the 8th day of July, 1907, and is to complete the same within one week thereafter (said time is to be apportioned equally between the parties hereto), unless the parties by stipulation to be entered into in writing shall agree upon another and different time and place;

depositions regularly taken may be admitted as evidence before him; and all of the testimony is to be reported to this Court on or before July 20, 1907; plaintiffs shall be allowed until July 25, 1907, in which to serve and file a brief and defendant shall have five days thereafter in which to file his brief; and plaintiffs five days thereafter to file a reply brief; other briefs may be filed by and on behalf of either party by consent of both parties or by permission of the Court.

Dated June 19, 1907.

JAMES WICKERSHAM,
Judge.

We consent to the above order, and request that same be made, and hereby agree that on said testimony to be taken and on said briefs so to be filed said cause shall be submitted to Hon. James Wickersham, Judge, and that same may be heard and determined in term time or vacation.

SHACKLEFORD & LYONS,
Attorneys for Plaintiffs.

R. W. JENNINGS,
MALONY & COBB,
Attorneys for Defendant.

[Endorsed]: No. 547-A. Hinchman et al. vs. Ripinsky. Order of Reference. Filed Jun. 20, 1907. C. C. Page, Clerk. R. E. Robertson, Asst.

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 547-A.

G. W. HINCHMAN et al.;

Plaintiffs,

vs.

SOLOMAN RIPINSKY,

Defendant.

Opinion.

Suit to Quiet Title.

Messrs. SHACKLEFORD & LYONS, for
Plaintiffs.

Mr. R. W. JENNINGS and Messrs. MALONY
& COBB, for Defendant.

GUNNISON, District Judge.

Plaintiffs bring this suit to quiet their respective titles to certain lots or parcels of land situate in the settlement or town known as Hines Mission, lying on the westward shore of Lynn Canal, at what is known as Portage Cove. The land in controversy is all embraced in United States Survey No. 573. The particular description of this survey by metes and bounds is set forth in the complaint, and plaintiffs allege that these lands, which embrace the principal business section of Haines Mission, or Haines, are now and since 1897 have been in the actual possession and occupancy of the plaintiffs. Their respective claims to the various lots are specifically enumerated in the complaint, and it is there asserted

by them that they have in good faith occupied the various *parcel* during the said time and have constructed thereon buildings such as stores, hotels, residences, etc., the value of which exceeds the sum of \$50,000.00. They also assert a common interest and claim in and to certain streets, avenues and alleys as public rights of way or highways, which they allege are used in common by all the residents of the town and by the public generally. They also allege that the defendant, Solomon Ripinsky, claims in and to the entire tract described in the complaint an interest or estate adverse to the plaintiffs; but that, with the exception of two small parcels, one 25 by 50 feet, which defendant purchased from one H. Fay, and the second 100 by 150, occupied by him for residential purposes, the defendant has never occupied any of the land to which the plaintiffs seek to quiet their title; and that he has no title or interest in or to the said land.

To the allegation of the plaintiffs, the defendant interposes a general denial, and sets up an affirmative defense, in which he alleges that for a long time prior to August 1, 1897, his grantors were the owners and in possession of all the lands described, and that by virtue of the prior occupancy and improvement of said land by his grantors they were entitled to the possession thereof, and that prior to August 1, 1897, the grantors had conveyed to the defendant all their rights, title and interest therein; that under said conveyance defendant had gone into and remained in the actual, open, notorious and exclusive possession and occupancy of said land as a home; by reason of

which acts he was the owner thereof against all persons except the United States, and was entitled thereto, and to enter the same as a homestead under the Act of Congress extending the homestead laws of the United States to Alaska. He also alleges that on the date above mentioned, and while he was such owner so in possession and occupancy, the plaintiffs and their grantors, unlawfully and with force and violence and against his will and in disregard of his rights, entered upon said lands and ousted him therefrom.

The allegations of the affirmative defense are put in issue in the reply. On stipulation of counsel, the testimony in the case was taken before a referee. At the hearing before the referee, and before any evidence was taken, the defendant objected to the taking of any testimony on behalf of the plaintiffs, on the ground that the complaint does not state facts sufficient to constitute a cause of action, or to entitle the plaintiffs to the relief sought, or to any relief. The question of the sufficiency of the complaint and of the amended complaint was raised by timely demurrer. The Court, after hearing the demurrer to the original complaint, ordered the plaintiffs to specify the particular holdings, and, on this being done, defendant demurred to the amended complaint. This demurrer was overruled. The question as to the sufficiency of the complaint, therefore, was settled for the purposes of this trial. In order to determine the other questions raised by counsel for the defendant, in his brief, it will be necessary to first examine the evidence.

The facts, as disclosed by the evidence, are substantially as follows: The land in controversy consists of some fifteen acres lying north of and adjoining the tract located for and occupied by the Presbyterian Mission at Haines. Within the bounds of this tract are situated the principal business, and a large part of the residential, portions of the settlement or town of Haines. The town has been platted and streets and alleys laid out and used by the people of Haines for several years. The land has been cleared by the plaintiffs and their predecessors, streets and alleys graded, and store buildings, hotels and houses used as residences, barns and warehouses, and structures of like character, have been erected upon the ground. The estimates of the amounts expended in this work range from \$50,000 to \$100,000. The first of the settlers at Haines made their locations and commenced their occupancy on the 14th of December, 1897, and while it is a well-known rule of law that the plaintiffs must recover upon the strength of their title and not upon the weakness of the defendant, the principal question in the case becomes one as to whether or not the tract upon which the locations by the settlers were made was public domain at the time. The defendant, Col. Sol. Ripinsky, deraigns his possessory title to this tract under a quitclaim deed from Mrs. Sarah Dickenson, by whom, he asserts, this tract in controversy was possessed and occupied for many years prior to the time when plaintiffs went upon the ground.

In order to understand the situation, it is necessary to go back to the year 1878, when George Dick-

enson, the husband of Mrs. Sarah Dickenson, first went upon the ground. Dickenson was accompanied by his Indian wife and their children. At that time acting as the representative of the Northwest Trading Company, he established a trading-post near the beach of Portage Cove, in the buildings now occupied by the defendant, and located for the trading company a tract, which his son William Dickenson testified was forty acres in extent. At the beach, he erected three structures; a frame house, which was used as a store and dwelling; and two log houses, one a warehouse and the other for the use of the natives who came to trade. At the same time, he located a tract of 160 acres for the mission, south of and adjoining the land taken up for the trading company. A dense forest of heavy timber and thick undergrowth covered all the land in question. Through this forest a narrow foot trail extended from the beach, near where he constructed his buildings, to the Chilkat River, some distance to the westward. At Dickenson's request, an officer from the U. S. S. Jamestown ran the lines of these tracts, and Dickenson set the corner posts. William Dickenson, the son, testifies that around this forty-acre tract his father ran a fence consisting partly of brush and rails on the south line, and the balance of a single galvanized wire, and that he also blazed the line. Around the cabins which he had constructed, Dickenson cleared a small piece of ground which he used as a garden. The evidence fails to disclose that the tract of land, other than the small portion cleared for the purpose of the garden, was ever put to any use

by Dickenson as the representative of the trading company, or that he did anything in the way of maintaining the fence or further improving the land. William Dickenson testified that in 1880 his father bought out the interest of the Northwest Trading Company at that point. This is the only evidence upon the subject. No deed or other documentary evidence of the transaction was offered, and, indeed, it is doubtful if any were executed. From 1880, George Dickenson continued to occupy the buildings and garden and carry on the trading business with the natives at that place until 1888, when he died. I am unable to find anything in the evidence which indicates that Dickenson, after the time at which he took over the interest of the trading company, repaired the fences, maintained his corner posts or made any improvements whatsoever upon the tract, or put the tract to any beneficial use whatsoever, aside from the small piece of ground lying immediately about the house and containing not to exceed a couple of acres of ground. This small tract, about which he built a brush fence, he cultivated as a garden. Shortly after taking over the business, he permitted one Blind Isaac, an Indian, to build a cabin just to the north of his dwelling, and within the bounds of the tract originally located for the trading company. A post was set to show the new line between his premises and those of the native. William Dickenson testifies that his father, during his occupancy, cleared the land back from the beach to a point about at the eastern line of Block No. 2, as it appears on the map, Plaintiffs' Exhibit No. 1, but this testimony is un-

corroborated, and is contradicted by several witnesses. As some twenty years or more have elapsed between the time of which he was testifying, and the appearance of the country has changed so completely from what it was at that time, it is probable that the witness was mistaken as to the distance. It is also claimed by William Dickenson that the tract located and claimed by his father was forty acres in extent, that he never claimed any less, and that he never disposed of any of the land save the small piece upon which he allowed the Indian, Blind Isaac, to build. After the death of the senior Dickenson, the family, consisting of his wife Sarah Dickenson, defendant's grantor; his son, the witness William Dickenson, who at that time was a young man of twenty-one; and a daughter, continued to reside at the trading-post and carry on the business for some time. Mrs. Dickenson cultivated a portion, but not all, of the garden for a few seasons; but during this period between the death of George Dickenson and the execution of the deed to Col. Ripinsky, the Dickensons, so far as the evidence shows, did not maintain the original fence or lines, nor did they exercise a single act of ownership or dominion over any portion of the tract outside of the garden plot.

In 1895, Mrs. Dickenson quitclaimed to Mrs. John Dalton an acre of ground lying between the buildings of the trading-post and the property of the mission, to the south. This was a portion of the tract which had been cleared for a garden by her husband.

Now, let us examine the acts of the defendant, as throwing light upon his knowledge of conditions as

they existed, and the ownership of the tract of land in question. In 1886, the defendant, Col. Ripinsky, as the agent of the Bureau of Education, came to Portage Cove to establish at that point a Government school. George Dickenson and his family were at that time living at the trading-post, and Dickenson and Ripinsky became well acquainted. From 1886 until the present time Col. Ripinsky has lived in that vicinity, and has been engaged in various business enterprises and occupations. A portion of the time, he lived on the Chilkat side of the peninsula. In 1897, he was engaged in the trading business at Chilkat. Late in November, or early in December, of that year, an outfit known as the Perry Humbert Expedition landed at Portage Cove with the avowed intention of projecting a railroad to the interior. His long residence in the country had made him familiar with the business advantages of the various localities, and this, taken with the proposed railroad starting from Portage Cove, made it apparent that that was to be the best site for a business in that vicinity. He immediately set about acquiring the rights of Mrs. Dickenson, and through the offices of the Rev. Franklin A. Rogers, who was stationed at Haines as a missionary, he negotiated for and finally obtained from Mrs. Dickenson a quitclaim deed (Defendant's Exhibit No. 7), which is as follows:

Chilkat, Alaska, December 2d, 1897.

Know all men by these presents, that I, Sarah Dickenson, of Chilkat, Alaska, in consideration of \$200.00 Two Hundred Dollars to me in hand paid by Sol. Ripinsky, of Chilkat, Alaska, the receipt whereof is

hereby acknowledged do hereby bargain, sell and transfer unto the said Sol Ripinsky both buildings and all the land adjoining the Presbyterian Mission grounds situate at Haines Mission, Alaska, adjoining the Mission grounds on the south to the Indian Village on the north, except one acre of land claimed by Mrs. J. Dalton. All the above property was left to me by my deceased husband George Dickenson was known as the Dickenson property which I will defend against all claims.

Signed,

S. DICKENSON.

In the presence of

F. A. ROGERS.

G. A. BALDWIN.

Be it known that on the 2d day of December, one thousand eight hundred and ninety-seven, Mrs. Sarah Dickenson, of Chilkat, Alaska, personally appeared and makes oath that the following statement by her subscribed is true.

Signed,

S. DICKENSON.

In the presence of

F. A. ROGERS.

G. A. BALDWIN.

Before me,

[Seal]

SOL. RIPINSKY,

Notary Public District of Alaska.

Col. Ripinsky, himself, drew the instrument and took the acknowledgment of it as a notary. His explanation as to why he, who was the grantee in the deed, took the notarial acknowledgment of it is

that he was the first, and in fact, the only notary in Alaska at that time. Besides the acknowledgment before him as a notary, the signature of Mrs. Dickenson was witnessed by Rogers, who carried on the negotiations for the purchase, and Grant A. Baldwin, the person who was then in charge of the Koebler & James store at Chilkat. The deed bears date the 2d day of December, 1897. It is contended by plaintiffs that the deed was not executed until later in the month, and Harry Fay, a plaintiff, and a witness, testified, that Baldwin was not called upon to witness the signature of the deed until some time after he, Fay, had made his location of a lot at Haines. The instrument itself negatives that assertion, since it appears from the file mark upon it that it was filed for record with the United States Commissioner at Dyea on December 15, 1897, at 10 P. M. It is of course possible that the instrument might have been executed on the 15th day of December and yet filed on that day, but the preponderance of the evidence is against that conclusion. Col. Ripinsky testified that the deed was executed on the day it bears date. The witness Baldwin also says it was executed in his presence about the 2d day of December, though he is not positive as to the exact day. Morris Ripin, brother of the defendant, testified that it was executed on the 2d day of December. The testimony of Franklin A. Rogers, the other witness to the signature, was taken by deposition. In his deposition he says that the deed was executed and delivered about the 9th or 10th of December. It is evident that Rogers was testifying purely from memory, of an

event that occurred nearly two years before, while Ripinsky, *Ripin* and Baldwin had the opportunity of inspecting the deed before testifying. In any event, the preponderance of the testimony seems to support the date of the instrument. As already indicated, this deed was filed for record with the United States Commissioner stationed at Dyea, a town lying at the head of Lynn Canal, but at that time the Commissioner at Dyea was not an ex-officio recorder, the only offices established for recording in southeastern Alaska at that time being at Juneau, Sitka, and Wrangell. Haines lay in the Juneau Recording District, and the deed was subsequently filed for record in the office of the Commissioner at Juneau, something more than a year after the attempted filing at Dyea. It is contended by the plaintiffs that certain alterations or additions were made to the deed subsequent to its execution. This contention is not supported by the evidence.

A few days after the execution of this deed from Mrs. Dickenson to Ripinsky, the son, William Dickenson, learned for the first time of the transaction. He thereupon armed himself with a rifle and took possession of the old buildings, demanding something for himself out of the property. The defendant, through Rogers, finally settled with him for \$50.00, and on December 21st, he executed to Ripinsky a quitclaim deed for "both buildings and fifteen acres of land adjoining the Presbyterian Mission, situate at Haines Mission, Alaska, except one acre of land claimed by J. Dalton."

This is the first appearance of the claim of fifteen acres made by the defendant. In fact, it is the first point in the case, when the various transactions are considered chronologically, in which any other area than the forty acres is claimed. There is nothing in the evidence to explain why fifteen instead of forty acres is attempted to be passed, when it is apparent that the intention was to convey all of the Dickenson's rights there. It is absolutely impossible to reconcile the statement and claim that George Dickenson located and claimed forty acres during his lifetime and that his family claimed that acreage after his death, which was made by William Dickenson on the stand, with this deed of William Dickenson, Defendant's Exhibit No. 9.

Both Col. Ripinsky and his brother Morris *Ripin* asserted that within a short time after the execution of the deed by Mrs. Dickenson, and in the month of December, they set about the construction of a two line-barbed-wire fence about the property, upon the original lines. Ripinsky testifies that before he purchased the property from Mrs. Dickenson, William Dickenson, the son, went with him over the lines of the tract and pointed out the corner posts to him. Nowhere in Ripinsky's testimony does it appear that he saw any of the old fence or the wire which had been put up by Dickenson's father. On the other hand, William Dickenson testified that he did not point out the lines of the property to Col. Ripinsky until after Ripinsky had settled with him, more than three weeks after the execution of the deed by Sarah Dickenson, his mother; and that at the time that he

went over the lines with Ripinsky, at the westerly corner, hanging from one of the posts which he pointed out to Ripinsky, was a portion of the wire which had been originally placed there by his father. This incident is not mentioned by Ripinsky. The circumstances themselves, the deed from William Dickenson to Ripinsky and the actions of William Dickenson, would seem to corroborate his (Dickenson's) testimony that it was not until after he had settled with Ripinsky that he pointed out the old lines.

We now turn for a moment from the acts of Ripinsky to those of the plaintiffs. On December 14th, Harry Fay, accompanied by several other men, among them being Al. James, John Penglase, a party named McLoughlin, and one other, whose name Fay does not recall, went across the Chilkat to Haines for the purpose of locating town lots, their interest in the proposition being inspired by the railroad project. The party was accompanied by the witness William Dickenson. They arrived there early in the morning, and went at once to the Mission, where they consulted W. W. Warne, who was connected with the Haines Mission, and also talked with the witness Dickenson as to what ground, if any, was claimed by anyone else. It was contended by plaintiffs that Dickenson pointed out the garden surrounding the old Dickenson trading-post, and the buildings on that, as the property belonging to his mother. The preponderance of the testimony seems to support this assertion, though Dickenson denies it. Warne also indicates certain lots or parcels of ground which he, himself,

had located. As already indicated, this land was heavily timbered, and this witness and all other witnesses who were called to testify as to conditions in the winter of 1897-8 testified that the land was not cleared or improved in any way, that it was covered with heavy timber. The men in this party proceeded to stake their lots. Fay placed a tent on the ground staked by him, marked out the boundaries and, shortly after, proceeded to clear the ground, fence it and put up buildings. Settlers continued to come through the balance of the winter and the spring of the following year, and in the next fall there was a considerable influx of people, due to the gold discoveries in the Porcupine.

We now turn again to the acts of Ripinsky, with regard to the building of the fence by him. Over this question of fence building, there is much contradiction. Morris Ripin testifies that, within a few days after his brother obtained the deed from Mrs. Dickenson, both he and Col. Ripinsky started out with gangs of Indians and one white man named Adolph, whose last name no one seemed to know, and who has disappeared, proceeded to build a two line barbed-wire fence around the property. The evidence as to this fence building is decidedly unsatisfactory and not at all convincing. On the other hand, there is no testimony, aside from theirs, of anyone who saw a two line barbed-wire fence, though there is testimony by Baldwin and Carl of having seen a barbed wire strung along the southern and at part of what was thought to be the western boundary of this tract. On the other hand, it is, I think, established beyond question

that Fay and his associates went upon the ground on the 14th of December of that year, located their lines, and from that time on, engaged in the work of fencing and clearing their several lots and buildings on them. As many of these lots face on Main Street, or what is known as the old Porcupine trail, close to the southern boundary of the tract claimed by Ripinsky, it seems impossible that Ripinsky and his men engaged in the building of this fence would not have encountered, or at least have seen these settlers, or that the settlers would have seen Ripinsky and his men, at some time during that period, for under the existing conditions, it would be impossible to string the wire and build the fence within a short time. And even had they completed the fence prior to the coming of Fay and his associates, they or someone else must have seen it. The evidence as to a fence on the north side of the Porcupine trail is vague and indefinite, practically the only fence to which anyone testifies being a single wire, which appears to have been a portion of the fence placed around the Haines Mission tract, and there are no witnesses who testify to having seen a fence on the north or west side, while many testify that, though they traveled back and forth over the tract in various directions during the winter of 1897-8 and the years 1898 and 1899, they never saw the fence or any portion of it. Defendant has failed to establish the construction of a fence about this property, and aside from this testimony of the building of the fence, there is no testimony whatever in the case of the exercise of any acts of ownership, possession or occupation of the land, except that in the

spring of 1898 he brought an action in ejectment in the District Court, entitled Ripinsky vs. M. W. Lane et al., in which he sought to recover possession of the tract upon practically the same grounds that he here sets up in defense to this action. The plaintiffs, Harry Fay, Tim Vogel and W. W. Warne, in this action, were defendants in the action referred to. That action was tried before a jury and a verdict returned for the defendants. It is plain from the testimony of most of the plaintiffs in the case at bar that they were cognizant of the claim of Ripinsky to the ground, though he made no formal protest against their building on the property until the year 1903. In the month of July, 1903, he sent by registered mail to a number of persons on this tract a formal protest against their building thereon, and asserting his claim to the property. No effort was made by him to maintain his fences or to reduce any portion of the tract in question, whether occupied or not, to possession, though the evidence discloses a few instances in which he, or someone representing him, made a verbal claim of ownership to some of the plaintiffs, and protested against their building thereon, but this was long after the people were in possession and after they had commenced work upon the buildings on their lots. One fact has, I think, considerable bearing upon the good faith of the defendant in his claim of this tract as a homestead. In 1902, he purchased from one, Ben Barnette, a two-story building and lot, which is described in the deed as half of Lot 4, fronting on Main Street, and which appears in the plat of the town (Plaintiffs' Exhibit

No. 1) as Lot 5, Block 1. While such purchases are frequently made with a view of disposing of contests over property and thus avoiding litigation, there is nothing in the acts of Col. Ripinsky, as I view the case, that indicates such a purpose in this transaction. The fact that the deed itself, which was drawn by the defendant describes the property as "situated on Sol. R. Ripinsky's homestead claim" does not strengthen his position. The amended notice of location posted some time in December, 1905, and filed in the office of the Recorder at Skagway on December 18th of that year, are both made and based upon "the exclusive legal right of ownership of said tract through mean conveyances and transfers to this claim from the original claimants who settled upon and exclusively occupied the same, according to law, from the year 1878 to the date of the transfer, and that he claims an actual, personal and continuous occupation thereof and settlement thereon since the month of December, 1897." The basis of his claim, then, is the prior, actual, personal and continuous occupation of the tract in question by his predecessors, the Northwest Trading Company and the Dickensons. It is clear that, if prior to the conveyance from Mrs. Dickenson to the defendant the Dickensons had reduced this property to possession, they would have had a possessory right in the tract which they could have conveyed to the defendant; but before any such right accrued, they must not only have been actually resident upon the property, but they must have so cultivated and improved the land and established and maintained their boundaries by substantial posts and

fences, as to reduce it to possession and give evidence to the world of what they claimed. *Price vs. Brockway*, 1 Alaska, 235; 26 Am. & Eng. Encyc. of L., 254; *Payton vs. Denman*, 129 Fed. 1. This possessory right can only be acquired by actual as distinguished from constructive possession, by which is meant a subjection of the land to the will and dominion of the claimant, and this is usually evidenced by substantial enclosure, by cultivation, occupation, or some other proper and appropriate use, according to the locality of the property. 26 Am. & Eng. Encyc. of L., 233-4; *English vs. Johnson*, 76 Am. Dec., 574. There is no evidence in this case that supports the claim of possessory right to anything more than the garden plot about the buildings at the beach, and the deed from Mrs. Dickenson to Ripinsky, in my opinion, conveyed only that tract.

If, however, before the rights of the plaintiffs had accrued to this tract, this defendant had actually reduced the property to possession by some such acts as indicated above, he undoubtedly could have succeeded in this action; for the prior possession of the first occupant would be better than the subsequent possession of the last. *Walsh vs. Ford*, 1 Alaska, 146, at 152; *English vs. Johnson*, 17 Cal. 108; 76 Am. Dec. 574; *Campbell vs. Ramkin*, 99 U. S. 261. But the defendant has failed to establish any such subjection of the property or the land in controversy to his will and dominion, and it is clear that when Fay and his associates went upon the land it was public domain. It is conceded by the defendant that subsequent to the location of the first settlers, Fay and others, at

Haines Mission, the defendant exercised no control over the tract, but it is urged, and with reason, that from that time the entire tract claimed by him was overrun by others, and that he could not without the exercise of force and violence have made any improvements upon the tract. Had his grantor had any rights to the property in controversy which she might have conveyed to the defendant, the situation would have been materially changed, and the entry of Fay, Warne and others would have been an unwarranted intrusion which could have afforded them no relief, nor could it have given them any standing. Under the facts as they appear in the evidence, in my opinion, they were rightfully upon the ground, and established their rights to the exclusion of any other rights which Ripinsky now claims to the tract, outside of that which appears on the plat marked "Plaintiffs' Exhibit No. 1, Ripinsky's Homestead." This smaller tract has from the month of December, 1897, until the commencement of this action been actually occupied and possessed by the defendant, and over it he has exercised acts of control and ownership which gave to him the exclusive right against all persons save the United States. This, however, does not extend to the larger tract.

But the defendant's counsel, in his brief, urges that there is disclosed by the evidence such multifariousness of interest on the part of the plaintiffs that the only judgment that can be rendered is one of dismissal. He points out that none of the plaintiffs claim under the same instrument or by virtue of locations made at the same time and under the

same conditions. It is true that no two claim under the same instrument. It is also a fact that those claiming under original locations did not, with a few exceptions, locate on the same day; but, on the other hand, it cannot be disputed that the claim of every plaintiff is based primarily upon possession and occupation, and the only title held by any of them is an equitable one, whether they were the first locators of the lots or whether they bought out some prior occupant.

While "courts will not permit several complainants to demand in one bill, although against the same defendant, several matters distinct and unconnected" (15 Enc. of Plead. & Prac., 667), and such a bill is undoubtedly bad, that situation does not exist here. These plaintiffs are not demanding distinct and unconnected relief against this defendant. They seek the removal from their several holdings of the cloud raised by the defendant's claim of interest. It is only when the interests of the plaintiffs are conflicting that their joinder as parties plaintiff is objectionable. On the other hand, it is well settled that where one general right is claimed and there is a common interest among all the plaintiffs in the subject of the suit, and the same relief is sought against the same defendants, their joinder is proper. 15 Encyc. of Plead. & Prac. 668, and cases cited. The facts in the case of *Utterbach vs. Meeker*, 47 Pac. 428, cited by defendant in support of his contention, are so entirely different from the facts in the case at bar as to render it, in my opinion, inapplicable.

An examination of the evidence discloses that the defendant's claim is either good or bad as against all the plaintiffs, for it is based absolutely on alleged facts and transactions which occurred prior to December 14, 1897, when the first of the locations made by plaintiffs occurred. *Osburn et al. vs. Wis. R. R.*, 43 Fed. 824. It is patent that if, at that time, the defendant had obtained any rights in this tract, it was upon an unoccupied public domain, and if not, then plaintiffs could establish no rights; but, if the defendant had not prior to December 14th established his rights to the tract now claimed by him, plaintiffs must succeed; and, as this condition of affairs exists in my opinion, it follows that decree should be entered for the plaintiffs.

As this is decisive of the suit, it seems unnecessary to consider the other questions raised by plaintiffs as to the validity of the deed by reason of the notarial acknowledgment having been taken before the grantee who is the defendant, or as to whether or not the filing of the deed with the United States Commissioner at Dyea, where no recording office was established, was sufficient notice to third parties. The plaintiffs also urge that the defendant's claim is barred because of seven years adverse possession by the plaintiffs. This contention too falls, upon an examination of the evidence. Whether or not the defendant is estopped from making a claim to the tract by the judgment in the case of *Ripinsky vs. Lane*, it is unnecessary to decide. The pleadings and judgment in that action were, in my opinion,

properly offered and should be received in evidence. They have been considered by me, as have the two deeds Defendant's Exhibits No. 7 and No. 9, respectively, from Sarah Dickenson and William Dickenson to the defendant.

In view of the facts as found in this case, it also seems unnecessary to discuss with particularity in this opinion the subject of the various lot claimed by the plaintiffs. The decree should be entered in favor of the plaintiffs.

Dated, this 10th day of July, 1908.

ROYAL A. GUNNISON,
District Judge.

[Endorsed]: No. 547-A. In the District Court of the United States for the District of Alaska, Division No. 1. G. W. Hinchman et al. vs. Solomon Ripinsky. Opinion. Filed Jul. 15, 1908. C. C. Page, Clerk. By E. W. Pettit, Asst.

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

G. W. HINCHMAN, WILLIAM HOLGATE, JOHN
G. MORRISON, J. A. NETTLES, CORTEZ
FORD, TOM VALEUR, R. M. ODELL, D.
BUTRICH, E. J. BERGER, IDA JOHNSON,
M. E. HANDY, FRED HANDY, G. C. DE
HAVEN, TIM CREEDON, BENJAMIN A.
MAHAN, THOMAS DRYDEN, ED. FAY,
JAMES FAY, H. FAY, W. W. WARNE,
THOMAS VOGEL, C. BJORNSTAD, M. V.
McINTOSH, MARY V. McINTOSH, JESSE
CRAIG, E. A. ADAMS, J. W. MARTIN, A.
J. DENNERLINE, S. J. WEITZMAN,
PETER JOHNSON, MRS. KATE KABLER
and V. READE,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Findings of Fact.

Now on this day this cause coming on to be heard on the testimony heretofore taken by the referee in this cause and thereafter submitted to the Court, and the opinion of the Court heretofore rendered herein, on the 10th day of July, 1908, and the Court being now fully advised in the premises, makes and enters herein its findings of fact as follows, to wit:

I.

That all of the plaintiffs herein named were at the

commencement of this action, and had been for a long time prior thereto, residents of the town of Haines, Alaska, and were at said time, and for a long time prior thereto, in possession and occupation of all the lands embraced in Survey No. 573, at Haines, Alaska, except two small tracts which are hereinafter in these findings described; that said tract of land so owned and occupied by the plaintiffs herein is described as follows, to wit:

Beginning at Cor. No. 1, under Ripinsky's house, from which point U.S.L.M. No. — bears S. $6^{\circ} 45'$ W. 2.64 chains distant, witness Cor. bears W. 30 links, a stone marked S. 573 W.C. 1; thence from true Cor. N. $14^{\circ} 20'$ E., along mean high-water mark of Portage Cove, 2.30 chains to cor. No. 2, not set, witness Cor. bears W. 30 links, a stone marked S. 573 W.C. 2; thence from true Cor. W. 9.10 chs. to Cor. No. 3, an iron pipe 3 inches in dia. marked S. 573 C. 3; thence N. 3.16 chains to Cor. No. 4, a granite stone marked S. 573 C. 4; thence W. 31.27 chs. to Cor. No. 5, a stone marked S. 573 C. 5; thence S. 1.68 chs. to Cor. No. 6, a stone marked S. 573 C. 6; thence S. $80^{\circ} 54'$ along north line of Presbyterian Mission, 34.00 chs. to Cor. No. 7, an iron pipe marked S. 573 C. 7; thence N. 1.67 chs. to cor. No. 8, an iron pipe marked S. 573 C. 8; thence E. 6.23 chs. to Cor. No. 1, the place of beginning. Magnetic variation at all corners $28^{\circ} 30'$ east; containing 15.40 acres, is within the exterior boundaries of the town of Haines, in the District of Alaska.

II.

That the defendant acquired no right, title or in-

terest in or to any of the premises described in paragraph one (1) of these findings by virtue of the alleged deed, dated December 2, 1897, and signed by S. Dickinson; and that the defendant acquired no right, title, interest, possession or right of possession in or to any of the premises described in paragraph one (1) of these findings by virtue of the homestead location notice, which he filed in the recording office at Skagway, Alaska, on the 23d day of June, 1903; and the defendant acquired no right, title, interest, possession or right of possession in said premises by virtue of the amended location, which he filed in the recording office at Skagway, Alaska, on the 18th day of December, 1905, and the said defendant never has had any right, title or interest in or to any of the premises described in paragraph one (1) of these findings, except two small parcels hereinafter described, one of which he obtained by purchase, and the other by actual occupation.

III.

That all of the lands embraced in said Survey No. 573 and described in paragraph one (1) of these findings, except two small parcels hereinafter described in these findings, were at the commencement of this action, and had been ever since and prior to June 23, 1903, in the actual, notorious and exclusive possession and occupation, in good faith, of the plaintiffs herein and of their grantors; that all of said lands embraced in said Survey No. 573 constitute the principal business section of the town of Haines, Alaska, and that the plaintiffs were at the

commencement of this action, and have been at all times since the 22d day of June, 1903, occupying said lands in good faith, for business and residential purposes; that these plaintiffs and their grantors have constructed buildings, such as stores, hotels, residences, etc., on said parcel of land, in value exceeding the sum of fifty thousand dollars; that the larger portion of said land embraced in said survey was, at the time of the commencement of this action, and has been since June 22, 1903, and prior thereto, occupied by the plaintiffs and their grantors in severalty, and that the remaining portions, except two small tracts hereinafter described in these findings, were occupied and used by the plaintiffs, at the time of the commencement of this action and at all times since the 22d day of June, 1903, and prior thereto, as streets and alleys and thoroughfares.

IV.

That the defendant had no right, title or interest in or to any of said tract of land at the time of the commencement of this action, and never had any right, title or interest or possession in or to said tract of land, except two small tracts—one 20 ft. wide by 50 ft. long, known and described as Lot 5, in Block one (1), in said town of Haines, and another small tract of land 100 ft. wide by 150 ft. long, which last parcel of land said defendant occupies as a residence and which is in the extreme easterly end of said tract of land, and is used by said defendant as a residence, store and garden, and said last mentioned tract of land of the said defendant is east

of said Block one in the town of Haines; that said two tracts of land described are included within the lines embraced in said Survey No. 573, and were owned and occupied by the defendant at the time of the commencement of this action, but said two small tracts of land are the only portions of said land embraced in said Survey No. 573, which were owned or occupied by the defendant at the time of the commencement of this action, or were ever owned, possessed or occupied by said defendant. To all of which the defendant excepts and the exception is allowed.

Done in chambers this 31st day of August, 1908.

ROYAL A. GUNNISON,

Judge.

[Endorsed]: Original. No. 547-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. *G. W. Hinchman et al.*, Plaintiffs, vs. *Solomon Ripinsky*, Defendant. Findings of Fact. Filed Aug. 31, 1908. C. C. Page, Clerk. By *A. W. Fox*, Deputy. *Shackleford & Lyons*, Attorneys for Plaintiffs. Office: Juneau, Alaska.

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

G. W. HINCHMAN, WILLIAM HOLGATE, JOHN
G. MORRISON, J. A. NETTLES, CORTEZ
FORD, TOM VALEUR, R. M. ODELL, D.
BUTRICH, E. J. BERGER, IDA JOHNSON,
M. E. HANDY, FRED HANDY, G. C. DE
HAVEN, TIM CREEDON, BENJAMIN A.
MAHAN, THOMAS DRYDEN, ED. FAY,
JAMES FAY, H. FAY, W. W. WARNE,
THOMAS VOGEL, C. BJORNSTAD, H.
RAPPOLT, KAREN BJORNSTAD, M. V.
McINTOSH, MARY V. McINTOSH, JESSE
CRAIG, E. A. ADAMS, J. W. MARTIN, A.
J. DENNERLINE, S. J. WEITZMAN,
PETER JOHNSON, MRS. KATE KABLER
and V. READE,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Conclusions of Law.

The Court having heretofore made and entered its findings of fact herein, now makes and enters its conclusions of law based on said findings of fact:

I.

That the plaintiffs were at the time of the commencement of this action the owners of, and entitled to the possession of all of the following described parcel of land situated in Haines, Alaska, and more particularly described as follows, to wit:

Beginning at Cor. No. 1, under Ripinsky's house, from which point U.S.L.M. No. — bears S. $6^{\circ} 45'$ W. 2.64 chains distant, witness Cor. bears W. 30 links, a stone marked S. 573 W.C. 1; thence from true Cor. N. $14^{\circ} 20'$ E., along mean high-water mark of Portage Cove, 2.30 chains to Cor. No. 2, not set witness Cor. bears W. 30 links, a stone marked S. 573 W.C. 2; thence from true Cor. W. 9.10 chs. to or No. 3. an iron pipe 3 inches in diam. marked S. 573 C. 3; thence N. 3.16 chains to Cor. No. 4, a granite stone marked S. 573 C. 4; thence W. 31.27 chs. to Cor. No. 5, a stone marked S. 573 C. 5; thence S. 1.68 chs. to Cor. No. 6, a stone marked S. 573 C. 6; thence S. $80^{\circ} 54'$ E. along north line of Presbyterian Mission, 34.00 chs. to Cor. No. 7, an iron pipe marked S. 573 C. 7; thence N. 1.67 chs. to Cor. No. 8, an iron pipe marked S. 573 C. 8; thence E. 6.23 chs. to Cor. No. 1, the place of beginning. Magnetic variation at all corners $28^{\circ} 30'$ east; containing 15.40 acres, is within the exterior boundaries of the town of Haines, in the District of Alaska, and embraced in Survey No. 573.

Except two small portions of said tract, which were owned and occupied by the defendant, namely: Lot No. 5, in Block No. 1, being a small parcel in the southeasterly portion of said tract of land, being 25 by 50 feet, and another tract in the extreme easterly part of the said tract of land, being 100 by 150 feet, the same being east of Block No. 1, of the town of Haines; that the defendant was at the time of the commencement of this action, the owner of

and entitled to the possession of said two last mentioned tracts of land, but the defendant at the time of the commencement of this action had no right, title or interest in or to any of the remainder of said tract of land embraced in said Survey No. 573, and never had any right, title or interest in or to any of the remainder of said tract.

II.

That the plaintiffs are entitled to judgment herein, decreeing them to be the owners and entitled to the possession of all that tract of land embraced in said Survey No. 573, except the two small tracts above described, which are the property of the defendant. That the plaintiffs are entitled to their costs and disbursements in this action. To all of which defendant excepts and exception is allowed.

Done in chambers this 31st day of August, 1908.

ROYAL A. GUNNISON,

Judge.

[Endorsed]: Original. No. 547-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plaintiff, vs. Solomon Ripinsky, Defendant. Conclusions of Law. Filed Aug. 31, 1908. C. C. Page, Clerk. By A. W. Fox, Deputy. Shackelford & Lyons, Attorneys for Plaintiff. Office: Juneau, Alaska.

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

G. W. HINCHMAN, WILLIAM HOLGATE,
JOHN G. MORRISON, J. A. NETTLES,
CORTEZ FORD, TOM VALEUR, R. M.
ODELL, D. BUTRICH, E. J. BERGER,
IDA JOHNSON, M. E. HANDY, FRED
HANDY, G. C. DE HAVEN, TIM CREE-
DON, BENJAMIN A. MAHAN, THOMAS
DRYDEN, ED. FAY, JAMES FAY, H.
FAY, W. W. WARNE, THOMAS VOGEL,
C. BJORNSTAD, H. RAPPOLT, KAREN
BJORNSTAD, M. V. McINTOSH, MARY
V. McINTOSH, JESSE CRAIG, E. A.
ADAMS, J. W. MARTIN, A. J. DENNER-
LINE, S. J. WEITZMAN, PETER JOHN-
SON, MRS. KATE KABLER and V.
READE,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Decree.

Now on this day this cause coming on to be heard on the findings of fact and conclusions of law heretofore entered herein by this Court, and this cause having been referred to a referee for the purpose of taking and reporting the testimony herein to this Court, and the said referee having taken all testimony offered in behalf of all parties hereto and submitted

the same to this Court; and the Court thereafter, after considering all of said testimony and pleadings herein, rendered its decision herein, and thereafter, having made its findings of fact herein and rendered its conclusions of law, which findings of fact and conclusions of law are now of record herein, and the Court having directed that a decree be entered in favor of the plaintiffs herein, in accordance with said findings of fact and conclusions of law aforesaid, it is therefore ordered and decreed that the plaintiffs be and they are hereby decreed to be the owners of and entitled to the possession of all of the lands embraced in Survey No. 573, situated in Haines, Alaska, and more particularly described as follows, to wit:

Beginning at Cor. No. 1, under Ripinsky's house from which point U. S. L. M. No. — bears S. $6^{\circ} 45'$ W, 2.64 chains distant, witness Cor. bears W. 30 links, a stone marked S. 573 W. C. 1; thence from true Cor. N. $14^{\circ} 20'$ E., along mean high-water mark of Portage Cove, 2.30 chains to Cor. No. 2, not set witness Cor. bears W. 30 links, a stone marked S. 573 W. C. 2; thence from true Cor. W. 9.10 chs. to Cor. No. 3, an iron pipe 3 inches in diam. marked S. 573 C. 3; thence N. 3.16 chains to Cor. No. 4, a granite stone marked S. 573 C. 4; thence W. 31.27 chs. to Cor. No. 5, a stone marked S. 573 C. 5; thence S. 168 chs. to Cor. No. 6, a stone marked S. 573 C. 6; thence S. $80^{\circ} 54'$ E. along north line of Presbyterian Mission, 34.00 chs. to Cor. No. 7, an iron pipe marked S. 573 C. 7; thence N. 1.67 chs. to Cor. No. 8, an iron pipe marked S. 573 C. 8; thence E. 623 chs. to Cor. No. 1, the place of beginning. Magnetic variation at all corners 28°

30' east; containing 15.40 acres, is within the exterior boundaries of the town of Haines, in the District of Alaska.

Save and except two small tracts of land, one 25 by 50 feet, known and described as Lot No. 5, in Block No. 1, of said town of Haines, and another small parcel of ground 100 by 150 in the extreme easterly end of said tract of land embraced in said survey No. 573, on which said land tract of 100 by 150 feet is situated a store building, belonging to the defendant, and a small garden.

And it is further ordered, adjudged and decreed that the defendant has no right, title, interest or possession in or to any of the remainder of the land embraced in said Survey No. 573, excepting the two small tracts heretofore described.

And it is further considered, ordered, adjudged and decreed that the plaintiffs do have and receiver of and from the defendant their costs and disbursements in this action, taxed at Four Hundred and Nineteen $35/100$ dollars (\$419.35). To all of which defendant excepts and exception is allowed.

Done in chamber this 31st day of August, 1908.

ROYAL A. GUNNISON,

Judge.

[Endorsed]: Original. No. 547-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Geo. W. Hinchman et al., Plaintiff, vs. Solomon Ripinsky, Defendant. Decree. Filed Aug. 31, 1909. C. C. Page, Clerk. By A. W. Fox, Deputy. Shackelford & Lyons, Attorneys for Plaintiffs. Office: Juneau, Alaska.

Page 3a—Schedule “C.”

*In the District Court for the District of Alaska,
Division No. 1, Juneau.*

No. 547-A.

Report of Referee.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOL. RIPINSKY,

Defendant.

**Index, Statement of Official Acts, and Certificate [of
Referee].**

Schedule “A.”

Rec'd from U. S. Com. at Skagway, and filed Sept.
25, '07.

Plaintiffs' Exhibits Nos. 2 to 96, inclusive.

Schedule “B.”

Defendant's Exhibits 1, 3, 5, 6, 7, 8, 9, 11, 12, 13, 14.
Exceptions of Deft. to Plffs. Exs. 3-95 inc. filed Aug.
5th, '07.

Schedule “C.”

REPORT OF TESTIMONY.

Page 3b.

Schedule “C”—Continued.

- | | |
|------|---|
| Page | 1. Title of Cause. |
| | 2. Oath required by Sec. 366, Chap. Thirty-six, A. C. |
| | 4. Stipulation as to Testimony of Davidson taken. |

10. Plaintiff's Exhibit No. 1 Marked in Evidence.
20. Hearing called at Skagway July 6, 2:30 P. M., and stipulation in reference thereto taken. H. Fay sworn, etc.
141. Plaintiffs' Exhibit No. 2 marked in evidence—testimony cont.
186. Hearing continued on July 8th, ——."
231. Interpreter sworn for native witnesses.
337. Plaintiff reads in evidence complaint, amended answer, verdict and judgment in cause No. 868, and in the same appear in this schedule at pp. 631 to 640 inc., marked Exs. Nos. 97, 98 and 99.
340. Stipulation of counsel relative to admission of Abstracts of Title of Plaintiffs in Schedule "A."
345. Defendant's Exhibit No. 7 (the Dickinson deed).
547. Stipulation as to testimony of Wm. Dickinson.
568. Hearing concluded at Skagway, 5:30 A. M., July 9th, '07.
569. Hearing resumed at Juneau under stipulation, July 13th.
618. Stipulation as to testimony of Penglase, Ruud and Davidson, and as to filing briefs herein.
619. Hearing resumed; testimony of Ruud taken July 17th.

622. Hearing resumed; testimony of Penglase taken July 19th; also additional testimony of Davidson—hearing closed.
28. Witnesses sworn pp. 5, 20, 76, 97, 118, 129, 186, 231, 242, 246, 249, 262, 266, 268, 270, 272, 279, 293, 305, 310, 318, 342, 389, 458, 569, 522, 619.

Headings in Index:

- dx—direct examination.
 ex—cross-examination.
 rdx—redirect examination.
 rex—recross-examination.
 reb—rebuttal examination.

[Referee's] Certificate [to Report].

Page 3c.

United States of America,
 District of Alaska,—ss.

I, L. R. Gillette, the duly appointed and qualified Referee appointed by the Court in Cause No. 547-A, hereinabove entitled, to report the testimony in said cause, hereby certify that pursuant to said appointment I duly took and subscribed the oath of office required by law prior to entering on the performance of my duties of such office, to wit, on the 5th day of July, 1906;

That I thereafter called said matter for hearing pursuant to the order of reference herein and under and pursuant to the stipulations of counsel in that behalf, as set forth in detail in schedules "A," "B" and "C" herewith submitted;

That said schedule "A" contains all of the exhibits offered and marked on behalf of the plaintiffs at the several hearings; Schedule "B" all of the exhibits offered and marked on behalf of the defendant at the several hearings, and Schedule "C" a full, true and correct transcript of the testimony in said cause as taken down by me in shorthand notes at said several hearings, and thereafter transcribed into typewriting;

That each and all of the witnesses called by the respective parties were by me, in each instance, first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter then in hearing, and thereupon gave their testimony as said Schedule "C" set forth (save the witness F. A. Rogers, whose deposition was read into the record).

Dated at Juneau, Alaska, this 12th day of August, 1907.

Respectfully submitted,

L. R. GILLETTE,

Referee.

[Endorsed]: Original. No. 547-A. In the District Court for the District of Alaska, Division No. 1. *G. W. Hinchman et al., Plaintiffs, vs. Sol. Ripinsky, Defendant.* Index, Statement and Certificate to Report of Referee. Filed Aug. 22, 1907. C. C. Page, Clerk. By R. E. Robertson, Asst. Attorneys for _____ . Office: Juneau, Alaska.

[Schedule "C" of Report of Referee—Testimony.]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 547-A.

G. W. HINCHMAN, WILLIAM HOLGATE,
JOHN G. MORRISON, J. A. NETTLES,
CORTEZ FORD, TOM VALEUR, R. M.
ODELL, D. BUTRICH, E. J. BERGER,
IDA JOHNSON, M. E. HANDY, FRED
HANDY, G. C. DE HAVEN, TIM CREE-
DON, BENJAMIN A. MAHAN, THOMAS
DRYDEN, ED. FAY, JAMES FAY, H.
FAY, W. W. WARNE, THOMAS VOGEL,
C. BJORNSTAD, H. RAPPOLT, KAREN
BJORNSTAD, M. V. McINTOSH, MARY
V. McINTOSH, JESSE CRAIG, E. A.
ADAMS, J. W. MARTIN, A. J. DENNER-
LINE, S. J. WEITZMAN, PETER JOHN-
SON, MRS. KATE KABLER, and V.
READS,

Plaintiffs,

vs.

SOLOMON RIPINSKI,

Defendant.

Testimony and Report of Referee.

APPEARANCES:

For the Plaintiffs, Messrs. SHACKLEFORD &
LYONS.

For the Defendant, R. W. JENNINGS, Esq.,
Messrs. MALONY & COBB.

L. R. GILLETTE, Referee, Juneau, Alaska.

Oath of Referee.

United States of America,
District of Alaska,—ss.

L. R. Gillette, being first duly sworn, on oath deposes and says:

I will support and *defendant* the Constitution of the United States, and I will well and faithfully perform the duties of Referee to take and report the testimony to the Court in the cause No. 547-A in the District Court for the District of Alaska, Division No. 1, at Juneau, entitled *G. W. Hinchman et al., vs. Solomon Ripinsky*, upon which I am about to enter, and therein do equal justice to all men, to the best of my knowledge and ability. So help me God.

[Seal]

L. R. GILLETTE.

Taken and subscribed before me this 5th day of July, A. D. 1907.

T. R. LYONS,

Notary Public for Alaska.

(See separate Index for page 3, L. R. G., Referee.)

[Report of Referee.]

Be it remembered: that on the request of Thomas R. Lyons, Esq., attorney for the plaintiffs, and R. W.

Jennings, Esq., attorney for the defendant, in the foregoing entitled cause, the undersigned as Referee in said cause, attended at the office of Messrs. Shackelford & Lyons in the City of Juneau, Alaska, at the hour of 9 o'clock P. M., of July 5th, 1907, there being present at the said time and place the said attorneys and one C. E. Davidson, Esq., called to testify as a witness in said cause on behalf of the plaintiffs; whereupon the following proceedings were had:

[Stipulation Concerning Testimony of Charles E. Davidson.]

By Mr. LYONS, Attorney for Plaintiffs.—It is hereby stipulated and agreed by and between the parties to this case and their respective counsel, that the testimony of Charles E. Davidson may be taken on behalf of the plaintiffs at this time and place under the order of reference duly made and entered in this cause on the 19th day of June, A. D. 1907, on the oral examination of counsel for the respective parties, with the same force and effect as if the said witness appeared before the Referee herein at Skagway, Alaska, on the 8th day of July, 1907, as provided in the order of reference herein; and the respective parties and their attorneys hereby waive all objection to the taking of testimony of said witness at this time and place, and all of the testimony and evidence given by said witness and introduced at this time shall be transcribed into the record herein by the Referee herein as the first witness on behalf of the plaintiffs with like force and effect as if the same had been given in all respects conformable to the provisions of the order of reference herein; further, that this stipu-

lation shall be by the referee copied into the record preceding the testimony of the witness Davidson, and the formality of signature thereto is hereby waived by the parties and their attorneys.

Whereupon the Referee took and subscribed the Oath of Office found on page 2 [p. r. 55] of this Report.

[Testimony of Charles E. Davidson.]

CHARLES E. DAVIDSON, being first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter in hearing, testified as follows on

Direct Examination.

By Mr. T. R. LYONS.—State your name, residence, and occupation?

A. Charles E. Davidson; residence, Juneau, Alaska; occupation, United States Deputy Land and Mineral Surveyor.

Q. Have you ever been at Haines, Alaska, Mr. Davidson? A. I have.

Q. When was the first time you ever visited Haines? A. In 1897.

Q. And have you visited Haines frequently since then? A. Yes.

Q. Do you know what the population of the town of Haines is, Charley, approximately?

Objected to by counsel for the defendant as irrelevant and immaterial.

A. No, I do not.

Q. Did you ever make a survey of any portion of the town of Haines? A. I did.

Q. For whom? A. Sol Ripinski.

(Testimony of Charles E. Davidson.)

Q. The defendant in this action?

A. Yes, sir.

Q. When did you make that survey?

A. I can't tell you exactly—two or three years ago; I can't give you the exact date.

Q. Do you know what he had that survey made for?

A. For patent.

Q. What was the area of the tract included within the exterior boundaries of that survey?

A. I don't know Tom; don't remember just what the area was.

Q. You made the survey for patent, you say?

A. Yes.

Q. For patent as a homestead?

A. Yes.

Q. Did you make any other survey of that ground except the one you made for Ripinsky?

Objected to as immaterial and irrelevant.

A. Yes.

Q. When did you make that survey?

A. February, 1907.

Q. For whom did you make that survey?

A. For the citizens of the town of Haines.

Q. I now hand you the second amended complaint in this action, to which is attached a tracing and plat, and ask you if you ever saw that plat before?

A. I have.

Q. What is it, Mr. Davidson?

A. It is a tracing showing the Sol Ripinsky survey and the lots in conflict.

Q. What is that tracing taken from?

A. That tracing was made by me; the original

(Testimony of Charles E. Davidson.)

was made from the field-notes of the Sol Ripinsky survey, and the lots were put on there from a survey I made on the ground.

Q. Describe, now, the tract of Ripinsky for which he applies for patent?

A. Do you want me to give the notes of it?

Q. Yes.

A. Beginning at Corner No. 1, thence running north $14^{\circ} 20'$ east—

Q. Can you locate that corner, Mr. Davidson?

A. It is marked corner number one—

Q. I mean can you locate it more definitely, with reference to its location on the ground?

A. Yes; beginning at corner number one, on the beach, thence running north $14^{\circ} 20'$ east 151.8 feet—you see I changed these distances here from chains into feet.

Q. That's all right; go ahead?

A. —to corner number two; thence W. 600.06 feet to corner number three; thence north 208.5 feet to corner number four; thence W. 2063.8 to corner number five; thence south—that course isn't on there—the distance; just put it south blank feet to corner No. 6, and I will put that in later from the notes; thence south $85^{\circ} 54'$ east along the Mission Tract 2244.00 feet to corner No. 7; thence north 110.2 feet to corner number eight; thence east 411.00 feet to corner number one and the place of beginning.

By Mr. JENNINGS.—This corner down here is number nine on my blue-print.

(Testimony of Charles E. Davidson.)

A. No, it should be seven; that is a mistake, and I will change that.

By Mr. LYONS.—Have you completed the description? A. Yes, sir.

Q. What did you tie Corner No. 1 to?

A. A United States Mineral Monument.

Q. Where?

A. I didn't put the course on here although it is given in the notes—it is right close to corner number one.

Q. And that's on the beach?

A. Yes, sir; the monument is on the beach near corner number one, about a hundred and fifty feet from it, something like that.

Q. You say this tracing has been taken from the original plat on file in the United States Land Office at Juneau, Alaska? A. Yes.

Q. And that map and plat—

A. No, that might be misleading; the tracing was made from the notes of the survey on file.

Q. And you don't know the area of the tract?

A. I do not; I have the notes of it, but can't state from memory what the area is.

Q. I wish you would get that.

A. I can give you the area—just leave that blank. (The area of the tract is 15.4 acres.)

Q. What is the width of the widest portion of the tract?

A. About four hundred and thirty-eight feet—I can't give it exact.

(Testimony of Charles E. Davidson.)

Q. How wide is the narrowest portion of the tract?

A. That's on that part there, between corner five and six, that distance is gone.

Q. Well, approximately how wide is it?

A. If you have a ruler I can scale it and tell you—it is sixty feet to the inch. (Measures.) It is about 100 feet.

Q. When did you first see this tract of land, Mr. Davidson?

A. Why, I think it was in 1897—the first time I was in Haines.

Q. It now embraces the greater portion of the town of Haines, does it not?

Objected to as immaterial and irrelevant, and on the further ground it is assumed there is a town of Haines and there is nothing to show such a town exists in law or in fact.

A. Well, if you mean the greater part of the buildings, it does.

Q. You made a subdivisional survey of the tract, did you not, showing the holdings of the different occupants of the premises in dispute?

A. Yes.

Objected to on the ground the question assumes there are occupants when there is no evidence to that effect.

Q. Well, nearly all of the tract embraced within the exterior boundaries of this survey is settled upon by town-lot occupants, is it not?

(Testimony of Charles E. Davidson.)

A. Why most of the people—most of the lots have buildings on them—the greater part of the lots.

Q. Now, I again call your attention to the tracing attached to the second amended complaint of the plaintiffs in this case, and ask if the subdivisional survey indicated on that plat was actually made on the ground by yourself? A. It was.

Q. And is this plat made up from the field-notes of the survey made at the time?

A. Yes, made from the field-notes.

Q. Where does Sol Ripinsky, the defendant, live as indicated on this tracing?

A. He lives on the east end of the Ripinsky Homestead near the beach—well, I can change that answer this way. He lives near the beach, perhaps fifty feet from the beach.

Q. How much of the tract embraced within the exterior boundaries of the survey—what is the number? A. U. S. Survey No. 573—

Q. —does the defendant Ripinsky actually occupy?

Objected to until it be shown what is meant by the word “occupy” and whether the witness knows of his own knowledge.

A. If you mean what his houses cover, it is only a very small portion of it.

Q. About what is the area—

A. It is only a very small piece his houses cover, and he has a small garden there, not very much.

Q. Is it correctly represented on this exhibit or tracing?

(Testimony of Charles E. Davidson.)

A. Well, I don't know as it is correctly represented on that tracing what he actually occupies. As far as his buildings, they are down there near the beach; but of course he may occupy the whole business some way, as well as where his houses are.

Q. What I mean Mr. Davidson, is this: How far from the southerly end of the tract do you find the first occupant holding adversely to Ripinsky?

Objected to as calling for the conclusion of the witness as to "adverse occupation," and he hasn't shown himself qualified to answer the question.

A. If you mean where the lots commence, it is two hundred and eighty-three feet.

Q. North?

A. On one side, well, now, this is east—you have got your question mixed on that.

Q. Now, I call your attention, Mr. Davidson, to the tract on this tracing marked "Ripinsky Homestead," and I ask you now what is the area of that tract?

A. Do you mean that portion not covered by the lots?

Q. Exactly? A. A little over two acres.

I now offer this tracing attached to the second amended complaint of the plaintiffs herein and which has been referred to and described by the witness, in evidence, and ask that it be marked Plaintiffs' Exhibit No. 1.

Marked "Plaintiffs' Exhibit No. 1, Cause No. 547-A, L. R. Gillette, Referee."

No objection.

(Testimony of Charles E. Davidson.)

Q. I will leave the exhibit attached to the complaint. Now, calling your attention again Mr. Davidson to Plaintiffs' Exhibit No. 1, I will ask you what is represented on that plat?

A. It represents streets, lots, and blocks and houses, as claimed by the residents of Haines, I suppose.

Q. What represents the buildings on this plat?

A. The shaded squares.

Q. Do you know whether or not all those shaded squares represent buildings which are occupied?

A. No, I don't.

Q. You know, as a matter of fact, most of them do?

A. I think most of them do; but I suppose there are a lot of them there is nobody in—at least I didn't see anyone.

Q. Haines is laid out as a town, is it not?

Objected to as irrelevant and immaterial to any of the issues in this case.

A. Why, streets, lots, and blocks have been laid out.

Q. And a great many people live there do they not? A. Yes, quite a good number.

Q. And it is laid out as a regular village or town, is it not, Mr. Davidson—

Objected to as immaterial and irrelevant.

—and the tract of land included with the exterior boundaries of U. S. Survey No. 573 includes nearly all of the business and residential portion of the town of Haines, does it not?

(Testimony of Charles E. Davidson.)

Objected to as immaterial and irrelevant.

A. Yes, a greater part of the business and residents are on that tract.

Q. You say you don't know the date you made that survey for Mr. Ripinski?

A. No, I don't remember now.

Q. Did you ever make any other survey of this same tract for him? A. No.

Cross-examination.

By Mr. R. W. JENNINGS.—Now, Mr. Davidson, you're a duly commissioned and authorized, regular deputy U. S. surveyor? A. Yes, sir.

Q. And were when you made out this tracing?

A. Yes, sir.

Q. When Mr. Ripinski wanted his land surveyed for a homestead, he had to have a regular deputy United States surveyor didn't he?

A. Yes, sir, for patent.

Q. And you surveyed his claim for him, did you not? A. Yes, sir.

Q. Now, from what did you survey that claim—where did you get his location notice?

A. I got it from the records.

Q. The records where?

A. I don't know where I located it or looked it up, but of course I looked it up—don't remember where I got it from.

Q. What I mean is, what city, what place was it where you got the record?

A. That's what I say; I don't remember whether I got the notices here or at Skaguay.

(Testimony of Charles E. Davidson.)

Q. Well, do you know—would you know that description if you should see it again?

A. I think I would.

Q. I hand you a paper headed “Notice of Location of Homestead,” on which is endorsed—first I will hand the paper to the Referee and have it marked Defendant’s Exhibit “A” or No. 1 for Identification. (So marked.)

Now, I hand to the Referee another paper which I will have marked Defendant’s Exhibit No. 2 for Identification. (So marked.)

And also another paper, which I will have marked Defendant’s Exhibit No. 3 for Identification. (So marked.)

Now, I hand you three papers that have been marked by the Referee as defendant’s identifications numbers one, two, and three, and ask you if it was from the description in those location notices that you got what you wanted for this survey—the data for this survey?

A. I think this is the one I took it from.

Q. The one marked “Defendant’s Exhibit No. 3 for Identification”?

A. That’s three—yes; I think this is the one I got it from.

Q. Well, is not that the same as numbers one and two, the description?

A. Practically the same thing I guess.

Q. Now, Mr. Davidson, the rules and regulations of your department, and under which you act, and

(Testimony of Charles E. Davidson.)

the Act of Congress, require that a homestead shall be laid out on a north and south line, does it not?

Objected to as calling for the conclusion of the witness as to a question of law, the Act of Congress and the regulations themselves being the best evidence.

By Mr. JENNINGS.—I simply wish to show—it is perfectly apparent that Sol Ripinski would never want to claim such a shaped tract as that for a homestead in an oblong shape like that, and that the surveyor had to lay the tract out under his instructions and the law, in that shape on account of conditions on the ground. Answer the question.

A. Yes, north and south, east and west, excepting where bounded by a previous survey, or where the tract is bounded by a tract that has been surveyed for patent, or where the tract is bounded by a meanderable body of water.

Q. Now, I notice that one side of this survey of Sol Ripinski adjoins the tract called the “Mission Tract”—is that line north and south? A. No.

Q. Or east and west? A. No.

Q. Why?

A. Because it is along the line of a previous survey.

Q. One that had already been made?

A. Yes, sir, I ran along the Mission survey.

Q. Then, in order to get—I’ll ask you if you then surveyed the tract described in this Defendant’s Exhibit No. 3 for identification, as nearly as it was possible to do so to conform to the rules and regulations

(Testimony of Charles E. Davidson.)

that you should run the lines north and south, east and west?

Objected to on the ground that the survey itself, and the law, will enable the Court to determine whether or not the law and the regulations have been complied with.

Q. I say, you surveyed this tract, and have platted it as near as possible to conform to the rules and regulations requiring you to turn the lines north and south, east and west, except where the tract is bounded by an already approved survey or a considerable body of water? A. Yes, sir.

Q. And also this tract shown on Plaintiffs' Exhibit No. 1, between corners numbered 1, 2, 3, 4, 5, 6, 7, and 8, is a true and correct survey of the land claimed by Sol Ripinski as near as it could be made comfortable to the rules of the department and the Homestead Act, is it not?

Objected by plaintiffs on the same ground as last above mentioned.

A. Yes, sir, as near as I could get it on there.

Q. And that plat you made has been approved by the department?

A. Yes, it has been approved.

Q. And is the plat and survey numbered 573?

A. It is.

Q. Now, then, when did you make the survey and plat of survey No. 573?

A. I can't say the date.

Q. Well, about when?

(Testimony of Charles E. Davidson.)

A. I think it was in 1904, I wouldn't be certain; I make so many of these surveys.

Q. Now, corner No. 1 of this survey, you say begins on the beach there? A. Yes.

Q. It begins at a large rock there on the beach, which is a United States monument, doesn't it?

A. No, that isn't corner No. 1; there is a tie runs from that.

Q. How far is it from corner No. 1 to the Initial Monument?

A. About a hundred and fifty to two hundred feet.

Q. You know there is a big rock down there on the beach? A. Yes, that's a monument.

Q. A well known landmark down there?

A. Yes.

Q. Very large rock? A. Yes.

Q. Now, you say you made this plat and survey for Sol Ripinski some time in 1904?

A. I think it was in 1904.

Q. Now, subsequently to that, Mr. Lyons, the attorney for the plaintiffs, or the plaintiffs themselves, employed you to make another survey to show what is claimed by his clients the plaintiffs in this case, in conflict within the lines of this U. S. Survey No. 573? A. Yes.

Q. And then you went up there and made the survey, and have platted it, and those plats claimed by the plaintiffs are shown on this map that you have been testifying about, Plaintiff's Exhibit No.1? A. Yes.

(Testimony of Charles E. Davidson.)

Q. You have spoken, Mr. Davidson, somewhat generally about the citizens of Haines, and about this map showing generally streets, and alleys, and lots and blocks claimed by the citizens of Haines; you don't know of your own knowledge that there is any town of Haines do you—I mean any regular town-site of Haines?

A. I know they claim it is a townsite.

Q. Do they claim they have had any townsite survey?

A. No, it never has been surveyed for a townsite.

Q. As a matter of fact, all you know is that there is a cluster of houses up there called the town of Haines?

A. Yes, I suppose that's all.

Q. You don't know how those houses came to *built* or who built them, do you?

A. No.

Q. Nor when they were built?

A. No.

Q. Except that there are some houses there, some of which are occupied by people and some of which are vacant, isn't that the fact?

A. Yes, some are vacant and some occupied.

Q. And Mr. Lyons asked you how much of that tract Mr. Ripinsky occupies; you don't know or don't undertake to say how much he occupies or claims?

A. No.

Q. You understand a person don't have to actually occupy all the land he claims, don't you?

A. Yes.

Q. You understand a man's buildings might occupy one acre, and yet as a matter of fact he may occupy ten acres—you understand that, don't you?

(Testimony of Charles E. Davidson.)

A. Yes.

Q. You never platted any town of Haines, did you?

A. No, I never made any survey of the town of Haines itself more than this.

Q. And you don't know of any streets and alleys in that town except what these people claim are streets and alleys?

A. They showed me a plat, which I had to go by.

Q. Do you know anything about that plat?

A. No.

Q. Just showed you a drawing of what they claimed was the town? A. Yes, sir.

Q. And you took their word as a fact, that what is marked "third avenue" on there is third avenue?

A. Yes.

Q. And you took their word as to the width of the streets and the line of the streets there?

A. Yes, sir.

Q. Beyond what somebody told you, you don't know anything about that at all, do you?

A. No.

Q. What did you say was the area of this tract?

A. I didn't say—don't remember.

Q. Do you know whether it is as much as fifteen acres?

A. It is about that I think; somewhere in that neighborhood. I have the notes and can give you the area later.

Q. Now, I hand you a blue-print, which I ask the Referee to mark Defendant's Exhibit No. 4 for

(Testimony of Charles E. Davidson.)

Identification. (So marked.) I hand you this blue-print which the Referee has marked Defendant's Identification No. 4 and ask you what that is?

A. Why that is a map showing the Sol Ripinski homestead.

Q. It is a blue-print?

A. Yes, sir, of the tracing marked Plaintiffs No. 1, excepting that there is a little mark—that's all right; it is a blue-print of that tracing.

Q. It is identical with that tracing, is it not?

A. Yes, it is the same.

Q. Virtually, a photograph of the tracing.

A. Yes; or better still, a print of it.

Redirect Examination.

By Mr. LYONS.—I call your attention to Plaintiffs' Exhibit No. 1; that part marked "Main Street"; that is an actually traveled thoroughfare, is it not, Mr. Davidson? A. Yes, sir.

Q. A well-defined street, is it not? A. Yes.

Q. From one end of it to the other?

A. Yes.

Q. How about "Sixth Avenue"?

A. Sixth Avenue, Fifth Avenue, Fourth Avenue, and Third Avenue are not traveled very much; not very much travel there, but they are laid out, there is a vacancy left for the streets; and Second Avenue is a thoroughfare, that is, First and Second Avenues or Second Avenue and First Street are traveled the most.

Q. But Third, Fourth, Fifth, and Sixth Avenues, you say, are not traveled very much? A. No.

(Testimony of Charles E. Davidson.)

Q. But they have been left vacant by the people of Haines for the purpose of streets and thoroughfares?

A. They told me they were left for streets.

Q. And they are traveled by people and used as such?

A. Oh, yes, they are traveled to some extent.

Q. And this exhibit, Plaintiffs' Exhibit No. 1, shows the land and the houses, and the streets, blocks, and lots just as they are on the ground?

A. Yes.

Recross-examination.

By Mr. JENNINGS.—Oh, I forgot to ask you, Mr. Davidson; do you know where the, what is called the Indian village is at Haines? A. Yes.

Q. Well, how far to the north of Corner No. 2 of the Ripinski Homestead does that village begin?

A. It is right close there.

Q. The Indian village, I mean; not any other houses but the Indian village?

A. Well, there are some houses here (indicating) and then comes the Indian village not far from it—I couldn't tell exactly how far it is.

Q. Do you know where an Indian named Blind Isaac lives there?

A. No, I don't know anything about that.

And be it further remembered that thereafter, at Skagway, Alaska, at the hour of 2:30 P. M. of the 6th day of July, 1907, at the U. S. Courthouse, the said matter was again called for the taking of testimony on behalf of the respective parties before L. R.

Gillette, the referee herein, there being present: Thomas R. Lyons, Esq., attorney for the plaintiffs; R. W. Jennings, Esq., attorney for the defendant; L. R. Gillette, referee, and sundry witnesses for the plaintiffs and defendant.

Whereupon the following proceedings were had:

By Mr. JENNINGS.—It is stipulated and agreed by and between the parties and their attorneys that the taking of testimony in this cause may be begun at this time and place, and no objection shall be urged at the hearing because the taking of the testimony was taken before the date set in the order of reference herein, but the same may be by the Referee taken and transcribed into the record with the same force and effect as if all of such testimony were begun and taken beginning on the 8th instant as in said order of reference provided.

[Testimony of H. Fay, for the Plaintiffs.]

Whereupon H. FAY, being called as a witness for the plaintiffs and first duly sworn according to law, testified as follows on

Direct Examination.

By Mr. LYONS.—Please state your name, residence, and occupation.

A. H. Fay; residence, Haines, Alaska; occupation, merchant.

Q. How long have you resided in Haines, Alaska?

The defendant at this time objects to the taking of any testimony at all in this case on behalf of the plaintiffs, on the ground and for the reason that the

(Testimony of H. Fay.)

complaint herein does not state facts sufficient to constitute a cause of action, or to entitle the plaintiffs to the relief sought, or to any relief.

A. Since 1897.

Q. Do you know what the population of the town of Haines is?

Objected to by the defendant as irrelevant and immaterial.

A. No, I do not.

Q. Do you know substantially what the population is?

A. Well, I might approximate it; does that include the native population?

Q. Yes, the whole population?

A. Well, I should judge about five or six hundred.

Q. Now, what is approximately the white population? A. About two hundred.

Q. Now, when did you first go to Haines?

A. December 14th, 1897.

Q. Have you resided there continuously ever since? A. I have between there and Chilkat.

Q. Have you had a business establishment or residence in Haines since you first came there in December, 1897? A. I have.

Q. You have maintained a business establishment there ever since that time, have you?

A. I hadn't started business there at that time, but I maintained a place—

Q. Just describe generally the character of Haines, the nature and character of the ground that

(Testimony of H. Fay.)

is now covered or included within the limits of Haines?

Objected to as irrelevant and immaterial, and for the further reason that there is no evidence that there are any limits to Haines or any town or settlement there that has any limits.

A. Well, when we went there, there were no white people then living at Haines, and there had been a little excitement or talk in regard to a railroad starting from Haines and on the strength of that we went from Chilkat to locate some lots at Haines.

Q. Where is Chilkat with reference to Haines?

A. Well, it is a mile and a half from Haines.

Q. Both in the first judicial division of the District of Alaska—both Chilkat and Haines?

A. Yes, sir. And among the locators, original locators that located at that time was one Billy Dickinson; that is, he was one of our party. His mother claimed a little garden spot there, and we took him along with us to see that we didn't get on any ground claimed by them—asked him, you know, where this property of his mother was, and he showed us this little garden spot, a little house they had below there for a store, and a warehouse; we also went over to the boundaries of the Mission Farm—

Q. Whom do you include in "we"?

A. There were about six of us.

Q. Who were they?

A. Al James, John Penglase; there was a party by the name of McLoughlin, I forget the first name;

(Testimony of H. Fay.)

another by the name of Spooner, and myself; and others I don't remember the names of at this time.

Q. Well, you went there and you located some town lots?

A. Yes. Well, before we located, we went over to the Mission and asked them there if there was anyone claiming the ground we were going to locate, because we didn't want to get on any ground that was claimed by someone else, if it was claimed—

Defendant objects to the answer, and moves to strike it on the ground that it is a self-serving declaration.

—and he said the only ground around there—

Defendant objects to the last portion of the answer as pure hearsay.

—the only ground anyone claimed around there outside of this little place of Mrs. Dickinson's was some ground he had cleared in getting fence posts, etc., for the Mission ground, and if we would just respect that little piece—it was a small piece there, probably one or two hundred feet square. So we started to locate from that, and went towards the beach in an easterly direction from that—

Q. Just a moment. Who was Billy Dickinson?

A. He was the son of Sarah Dickinson, and they lived at Chilkat at that time.

Q. Now, you stated that Sarah Dickinson owned a little garden place close to the beach at Haines?

A. Yes.

Q. And Billy Dickinson is her son?

A. Yes, sir.

(Testimony of H. Fay.)

Q. Did he take you to this garden and define to you the limits which she claimed? A. He did.

Objected to as immaterial, irrelevant and incompetent for the reason that Billy Dickinson's acts, if any such there were, are not competent to bind Mr. Ripinski, the defendant in this case.

Q. Now, you are familiar with the ground, or the parcel of ground, in controversy in this action, are you not? A. I am.

Q. You have known it how long?

A. Since—well, I have known the ground ever since I have been there—1897.

Q. Now, when you went there with others, and located the lots you have described, what was the character of the ground at that time as to whether or not it was covered with timber, or had it been cleared? A. It was all grown over with timber.

By Mr. JENNINGS.—Are you talking now about the first time you went there in 1897?

A. Yes, sir.

By Mr. LYONS.—Describe now, the character of the timber, Mr. Fay?

A. Well, it was large timber, like that you find in any ordinary—well, you might say waste, in Alaska, where the growth is thick and there are big trees; and the clearing of it was a very hard proposition, very expensive.

Q. Was the defendant Ripinski living at Haines when you went there in 1897? A. No, sir.

Q. You say that you consulted Billy Dickinson and the missionary—what was his name?

(Testimony of H. Fay.)

A. W. W. Warne.

Q. You say you consulted W. W. Warne and Billy Dickinson as to what ground in that vicinity was claimed by anyone, and they indicated to you the garden of Mrs. Dickinson by the beach, and a certain other parcel of land claimed by Warne—where was that located with reference to Mrs. Dickinson's?

A. Well, it was located—let's see—in a westerly direction.

Q. How far from her?

A. I should judge about five hundred feet. He also showed us that place, and showed us the Mission line—of course we didn't know anything about the line; and we wanted to make our locations so they wouldn't conflict with the Mission line, or anything they claimed, or anybody else.

Q. The Mission line lies southerly of the premises now in controversy?

A. Yes, sir.

Q. Were these the only two people residing at Haines from whom you could obtain any information as to property or land owned or claimed in that vicinity?

Objected to as leading.

A. Well, Billy Dickinson didn't live at Haines, he lived at Chilkat; Mr. Warne lived at Haines.

Q. Were there any people residing at Haines at that time?

A. None but the natives, that I can now recall.

Q. I now call your attention to Plaintiffs' Exhibit No. 1, which is a plat attached to the second amended

(Testimony of H. Fay.)

complaint in this case, and I ask you if you are familiar with the premises described on that plat?

A. I am.

Q. I call your attention now to the parcel of land which is inclosed within a yellow-shaded line, which is conceded to be the tract claimed by the defendant Ripinski as a homestead, and I ask you what was the condition of that entire tract when you went to Haines in December 14th, 1897?

A. Well, it was all covered with timber; there was no road of any kind. There was a trail along the line of the Mission ground and a brush fence, and there was a house—

Q. Identify that now, Mr. Fay, by where you see “Main Street” on this exhibit No. 1?

A. This is Main Street along here—

Q. Is that where the trail was?

A. Yes, sir, there was an Indian trail along there, and this in here was all covered with heavy timber all along there, big trees; and there wasn't a house of any description around here that I know of other than the house belonging to Mrs. Dickinson, and the warehouse.

Q. Where were those buildings?

A. On the ground here claimed by Mrs. Dickinson.

Q. Marked on this Exhibit No. 1 “Ripinski Homestead”?

A. Yes, sir.

Q. Now, Mr. Fay, go on and give a brief history of the development and settlement and improvement of that tract, and by whom it was improved and settled, up to the present date?

(Testimony of H. Fay.)

A. Well, there was a big party of people that came in around the vicinity of Pyramid Harbor in 1897 called the Perry-Humbert Outfit, I believe, and there was some talk of a railroad. They brought up immense stores, that is stocks of goods and livestock, horses, etc., several—you might say several hundred tons of it, and it was on the strength of this railroad talk that we went over and located at Haines. We made our locations, put up our tents, fenced our ground and cleared it; others done the same, put up buildings, and shortly afterwards I put up a house there which I subsequently used as a store. The railroad business didn't materialize—they didn't build the railroad, and things of course died out a little, and then there wasn't very much excitement there until the Porcupine excitement.

Q. About when was that?

A. If I remember right it was the fall of 1898. Well, that caused a big rush in there. At Chilkat, it was hard to get freight in in those days, and steamers would go around there such as the "Walcott" and "Rustler," and the "Walcott" was stuck in the mud there at different times and they refused finally to go around there with freight any more. I was running a store at Chilkat at the time for Kohler & James, so we used to receive our freight after that at Haines. Well, business commenced to pick up a little over there—

Q. At Haines?

A. Yes, sir; and people commenced to move over, the Indians and others; so in the meantime Kohler &

(Testimony of H. Fay.)

James sold out at Chilkat and I started a store at Haines and had a little branch at Chilkat at the same time. Well, during all that time different parties kept coming in, improving the land and building houses on the place, but during the time from when the original locators went there to the Porcupine excitement or the strike in the Porcupine there hadn't been much excitement; as I said, the railroad talk blew over and died out; but as soon as the Porcupine rush was on people commenced to come in there, they would come down the river and buy supplies and so on, and—

Q. Now, about how many business houses are there in Haines to-day?

Objected to as immaterial and irrelevant.

Q. I mean business establishments of any kind?

A. Oh, I should judge about twenty-five, approximately.

Q. What can you say as to what proportion of the town of Haines is included within this tract claimed by Ripinski?

Objected to as immaterial and irrelevant, and on the further ground that there is no evidence that there is any town of Haines.

A. It is the main business portion of the town.

Q. What per cent of the residential and business portion of Haines is included within that tract?

Same objection as last above.

A. Well, I should say about ninety per cent of the business industries are carried on there.

(Testimony of H. Fay.)

Q. Is the town or village of Haines surveyed into lots and blocks, Mr. Fay?

Objected to on the ground that it is immaterial and irrelevant, and if there is any such survey, the record is the best evidence of the survey.

A. Yes, sir.

Q. I call your attention to Plaintiffs' Exhibit No. 1 and ask you if that plat correctly indicates the lots and blocks of the town of Haines and the disputed tract?

Q. It indicates—

Objected to on the ground that it is immaterial and irrelevant, and for the reason that no proper foundation is laid; the question as to whether the plat is correct can only be answered by the person that made it and has compared the field-notes with the plat and that the field-notes are correct.

A. The blocks are all right, but the numbers are not as they were before; the parcels are all right there. For instance one man he owns you might say Lot No. 6; well, on this plat that would be divided into six or seven parcels; but it is otherwise a copy of the original survey made by Fogelstrom in 1897 for which we paid for a subdivisional survey. In that first survey, for instance if you had one lot it would cost you so much to have it surveyed and platted on that original survey.

Referring now to what is marked on Plaintiffs' Exhibit No. 1 as Main Street, I ask you what that is on the ground?

Objected to as immaterial and irrelevant.

(Testimony of H. Fay.)

A. It is the main street of the town of Haines, and it is between the Mission line and the town of Haines.

Q. Well, is it used as a public street by all of the people of the town of Haines?

Objected to as immaterial and irrelevant, and because the term "the people of Haines" is general and indefinite.

A. It is. The people of Haines have put considerable money into fixing the road at different times.

Q. That is, Main Street? A. Yes, sir.

Q. Well, can you give approximately the amount of expenditure that has been made by the people of Haines in improving Main Street?

Objected to as immaterial, irrelevant, and indefinite, the term "people of Haines" calling for the conclusion of the witness.

A. I would approximate it at about ten thousand dollars.

Q. I now call your attention to what is marked on Plaintiffs' Exhibit No. 1 as "Second Avenue"; is that used as a thoroughfare or street by the people of the town of Haines?

Objected to for the reasons last above stated.

A. Yes, sir.

Q. How about "Third Avenue" as marked on Plaintiffs' Exhibit No. 1—is that used as a thoroughfare or street by the people of the town of Haines?

Same objection as last above.

A. Yes, sir.

(Testimony of H. Fay.)

Q. What can you say with reference to the usage of Fourth Avenue as marked on this exhibit, by the people of the town of Haines as a street or thoroughfare?

Same objection as last above.

A. Well, of course the street is laid out there, but there isn't much travel; I don't know whether Mr. Hinchman goes up that way to his property or not; it is used at times, but there isn't a great deal of traffic along that avenue.

Q. But it is laid out as a street?

A. Yes, sir.

Q. What can you say with reference to Fifth Avenue on this exhibit No. 1, as to whether or not that is used by the people of Haines as a thoroughfare or street?

Same objection as last above.

A. It has been used extensively this last seven or eight years; there is a good road along there, and you can go right along here and out Fifth Avenue.

Q. Well, when you say "along here" just indicate the place you are pointing to, Mr. Fay, so the Referee can get it in the record?

A. Main Street road is in good shape and is used extensively and also the street as marked "Fifth Avenue" here, and there is a good road there which has been used extensively and it runs above or north of this disputed tract and in an easterly direction back to Second Avenue here. That has been used quite extensively for several years past for teams and traffic.

(Testimony of H. Fay.)

Q. What can you say about Sixth Avenue—has that been laid off as a street?

Same objection as last above.

A. Yes, sir.

Q. Is it used as a street and thoroughfare by the people of the town of Haines?

Same objection as last above.

A. No; there has been a very little traffic along that street.

Q. Is it laid out as a street?

A. It is laid off, yes, sir.

Q. Now, are all of these streets and avenues as laid out on Plaintiffs' Exhibit No. 1 actually laid out as streets and avenues, Mr. Fay?

A. Yes, sir.

Objected to as immaterial and irrelevant.

Q. As indicated on Plaintiff's Exhibit No. 1?

A. Yes, sir.

Q. Can you give an estimate of the expenditures that have been made by the occupants or people of the town of Haines and particularly the occupants of this tract of land in dispute?

Objected to as immaterial and irrelevant.

A. Well, approximately I believe I could.

Q. What amount of expenditures have been made—or approximately how much—have been made on this tract in dispute by the occupants of town lots thereon?

Same objection as last above.

A. Approximately, I should judge about fifty thousand dollars.

(Testimony of H. Fay.)

Q. Do you now refer to the construction of buildings and improvements, or do you also include the clearing of the land?

A. Clearing and building.

Q. Has all that tract been cleared?

A. No, sir.

Q. What portion of it is still uncleared?

A. I should say this portion down here.

Q. Indicate by some description to the Referee, what portion?

A. The westerly end of this tract here, nobody has located on that ground, it being in an undesirable place down here, being a swamp, and that hasn't been cleared at all, other than people would go there to get their wood—it was handy for that after all this had been cleared.

Q. You refer to the most westerly end of Block No. 6 as indicated on Plaintiffs' Exhibit No. 1?

A. Yes, sir.

Q. And all the rest of the disputed tract has been cleared?

A. Yes, sir.

Q. And built upon?

A. Well, it hasn't all been built upon. There was houses on every lot in this place here in dispute, and we had a forest fire in 1903 that destroyed I should say approximately forty houses there along this strip; the fire started, I believe, in July and burned for quite a long time—took quite a long time to save some of the property here as the water gave out of the wells and we had teams hauling water from the beach to protect the property.

(Testimony of H. Fay.)

Q. State whether or not any—or whether or not the occupants have constructed other buildings on these lots after the fire of 1903?

Objected to as immaterial and irrelevant.

A. Some of them have.

Q. Are all of the lots which are indicated on Plaintiffs' Exhibit No. 1 occupied at this time by citizens of Haines?

Objected to as immaterial, irrelevant, and indefinite.

A. No, sir.

Q. What percentage of them are?

Objected to as immaterial, irrelevant, and indefinite.

A. Question withdrawn. I'll ask you, Mr. Fay, if you can indicate or state what lots as indicated on Plaintiffs' Exhibit No. 1 are actually occupied?

Objected to as irrelevant and immaterial, and because the map itself shows where the buildings are.

A. These here are occupied and claimed by the parties whose names appear on the lots in Block No. 1—

Defendant objects to the answer and moves to strike on the ground that it is not responsive to the question because the question does not call for who "claims" the lots, and for the further reason that this witness is not competent to testify who claims lots and who doesn't.

Q. Counsel for the plaintiffs agrees to have that portion of the question stricken—or that part of the answer as to who claims the lots. Mr. Fay, I wish to

(Testimony of H. Fay.)

direct your attention to the question as to what lots are actually occupied on this disputed tract?

A. Well, these are all occupied—

Q. Well, what ones—you merely say these?

A. All of the lots in Blocks No. 1 and 3, and half of the lots in Block No. 4; half of the lots in Block No. 5, and some of the lots in Block No. 6.

Q. When you say half of the lots in blocks one, two, three, four and five, indicate which half in each block is so occupied?

A. The southerly half, adjoining Main Street.

Q. How long have these lots been actually occupied by lot owners of the town of Haines?

Objected to as immaterial, irrelevant and indefinite.

A. From December, 1897—that is some of them; some came in later.

Q. Well, can you tell what percentage of the lots, or what lots were located in December, 1897, and within the following say three months?

Objected to as immaterial and irrelevant.

A. The lots in Block No. 1 and Block No. 2, the south half adjoining Main Street, and part of the north half of Block No. 1.

Q. When were the remaining lots in Block No. 1 located?

Objected to as immaterial and irrelevant, and no proper foundation laid.

A. Well, they were located in from 1898 on; at that time this Porcupine rush started and there was

(Testimony of H. Fay.)

an influx of people and they kept coming and coming—

Q. You say from 1898 on—until when?

A. Up to the present time.

Q. Well, how recently were any locations made in Block No. 1?

A. Well, there hasn't been any locations made in Block No. 1 that I know of for many years.

Q. For how many years?

A. I can't recall just the time these lots—now, the parties that own these lots of course will be here themselves, and I can't say as to that; but these lots back here, on the north side of Block No. 1 were located in December, 1897, and some of these others I believe were located in 1898—some of the other lots.

Q. When were the other lots in Block No. 2 located, the northerly half of the block?

A. Well, these lots in Block 2 north of the original locators were located in 1897 also; that is, there was—I don't just remember the amount of ground the parties claimed, but that also was located in 1897.

Q. Well, how many of that northerly tier of lots in Block No. 2 were located in 1897?

Objected to as irrelevant, immaterial and incompetent.

A. All of them, since I recall; I stated that only these; but I recall now Warne's locations were in that block and others located there in 1897.

Q. When were the lots in Block No. 3 located?

A. In 1898 or 1899, I can't remember as to a certainty, because this excitement started if I remember

(Testimony of H. Fay.)

right in the fall of—the Porcupine excitement—in the fall of 1898 if I remember right.

Q. When were the lots in Block No. 4 and 5 located?

Objected to as immaterial and irrelevant.

A. About the same time I believe, in 1898 and '99.

Q. And the lots in Block No. 6?

Objected to on the same ground.

A. Well, they were located—I can't say as to the year, but there are different people on lots of these lots now than were originally on there.

Q. Do you know the defendant, Mr. Solomon Ripinski? A. Yes, sir.

Q. When did you first become acquainted with him? A. In December, 1897.

Q. Where? A. At Chilkat, Alaska.

Q. Was he living at Haines when you first went to Haines and located the lots as you have described?

A. No, sir.

Q. When did he go to Haines first?

A. He started in business in Haines first, I believe, in 1898.

Q. Where

A. Right here; there was a store building and warehouse; he started in there.

Q. On the tract marked "Ripinski Homestead"?

A. Yes, sir.

Q. And you say you have resided at Haines ever since December 14th, 1907?

A. No, sir; I resided at Chilkat, and made this

(Testimony of H. Fay.)

location at Haines in 1897, and was running a store over there at Chilkat at the time.

Q. Well, when did you go to Haines to reside, Mr. Fay? A. In 1898.

Q. What time in the year 1898?

A. In the fall of 1898.

Q. And you have resided there ever since, have you? A. Yes, sir.

Q. What, if any, improving did the defendant do on this tract of land in controversy, at any time since you first went to Haines?

A. He hasn't done any.

Q. Hasn't done anything?

A. Of course he has this store and warehouse here.

Q. Always indicate the tract by some description, so as to get it in the record, Mr. Fay?

A. He has a store and warehouse on the easterly extension of this plat here, below where the lots are indicated on this map.

Q. And what is that marked?

A. The "Ripinski" homestead; yes, sir.

Q. Did he ever improve, or contribute towards the improvement of any other portion of the premises included within the exterior boundaries of this tract now claimed by him as a homestead?

A. Not that I know of.

Q. Well, you have resided there all the time since 1898, Mr. Fay, haven't you? A. Yes.

Q. Well, if he had done any improvements or anything towards appropriating that land, would *would* have known it?

(Testimony of H. Fay.)

A. Well, he has a piece of ground here he has at different times put improvements on.

Q. What piece of ground is that?

A. It is marked as Parcel No. 5 in Block No. 1.

Q. And marked "Sol Ripinski"?

A. Yes, sir.

Q. Do you know how he acquired an interest in that lot?

By Mr. JENNINGS.—There is no objection to the question if he knows of his own knowledge.

A. Yes, sir.

By Mr. LYONS.—How and when?

A. I originally owned the place and sold it to a man by the name of Bigelow, and he sold it again to B. A. Barnett, who stated he was Sol. Ripinski's agent.

Defendant moves to strike the answer as to what Barnett stated about agency.

Q. Did you talk with Mr. Ripinski about that lot?

A. Yes, sir.

Q. What conversation did you have with him in reference to that lot?

A. Well, frequently we would have occasion to have some little amusement of some kind in that building, a dance or something of the kind, and we always went to Ripinski to rent the place for any little occasion of that kind we might have.

Defendant moves to strike the answer, especially as refers to the word "frequently" unless the witness can fix the date or approximately fix the date.

(Testimony of H. Fay.)

A. While Barnett bought the building, at least at that time why we always done our business with Ripinski, and subsequently B. A. Barnett sold it to Ripinski.

Q. You originally owned that lot you said?

A. Yes, sir.

Q. Located it, did you? A. Yes, sir.

Q. Now, Mr. Fay, state what lots you located in Haines in 1897, and what you did towards marking the boundaries of the lots you did claim and locate?

A. I located the lot here, which is indicated on this plat in Block No. 1 as numbers four and five. At that time my locations was 100 feet square. Shortly after that when we had our town surveyed, my width was all right; they recognized the lot as located, 100x100, and all the lots as originally located; but they lengthened the lots out to 140 feet and took 10 feet off the length of each lot for an alley way, and they made by lot according to the town council at the time, we had the map made out and made the lots 140 feet over all in depth.

Q. One hundred and forty feet from Main Street, and a hundred and forty feet fronting on Main Street?

A. Yes, sir, a hundred feet on Main Street, and then from the north end of Main Street 140 feet was the north boundary line and then there was ten feet for an alley—a hundred and fifty feet you might call it, deep, and ten feet off for the alley.

Q. Leaving you lots then, a hundred and forty feet from Main Street to the alley?

(Testimony of H. Fay.)

A. To the line of the alley, yes, sir.

Q. Now what did you do towards marking the boundaries of that lot?

A. I cleared the ground, put up a tent, and fenced the ground.

Q. How did you fence it?

A. I fenced it with wire, putting posts in.

Q. How many strings of wire did you put up?

A. Well, if I remember, I think it was two; I can't recall to a certainty.

Q. Did you enclose the entire parcel you located with that sort of a fence?

A. Well, I enclosed the whole 140 feet, because before we had it all cleared the survey was made and lengthened, the back part to 140 feet and that was all enclosed.

Q. Then you enclosed the whole lot with a fence?

A. Yes, sir.

Q. When did you do that?

A. That was done shortly after the lot was located.

Q. And have you owned that lot ever since?

A. All except this parcel that has been sold.

Q. To Ripinski? A. No, to Bigelow.

Q. Who afterwards, you say, sold to Barnett, and Barnett subsequently sold to Ripinski?

A. Yes, sir.

Q. And you still occupy all the remaining portion of that lot, do you? A. Yes, sir.

Q. What have you done towards improving it, and when did you first begin to improve it?

(Testimony of H. Fay.)

A. I first began to improve it when I located it, and I now have a store building on there, a dwelling, and warehouse in front of the dwelling; have a well on there, and a stable, and use the back part of it there, this building, partly as a warehouse and partly as a stable—the back end as a warehouse and the front as a stable.

Q. When did you first erect a building on that lot, and what building was it?

A. Why, in—you don't mean the tent I put up there?

Q. Well, describe the tent; when did you first put that up? A. I put that tent up in 1897.

Q. Now, when did you erect your first building on that lot?

A. And that doesn't include the tent?

Q. Of course not, you have already testified as to the tent?

A. The first building I put up was in 1898, and it was that store building.

Q. Since that you have occupied that parcel of ground as a home and a place of business, have you?

A. Yes, sir.

Q. And you still occupy it as a home and place of business? A. Yes, sir.

Q. And when Mr. Ripinski first went to Haines, he saw you there in possession of it, did he?

A. Yes, sir.

Q. Did he say anything to you at that time, when you first went to Haines—that is, when he came over there? A. No, sir.

(Testimony of H. Fay.)

Q. He didn't lay any claim to it then?

A. No, sir.

Cross-examination.

By Mr. JENNINGS.—Mr. Fay, you say you first went on that ground on December 14th, 1897?

A. Yes, sir.

Q. And that the reason you went there was because of a big expedition called the Perry-Humbert Exposition that had arrived at Chilkat, and there was some talk of a railroad and you went over there to get some lots to locate, because you thought it was going to be valuable?

A. Well, there were others there since I went over.

Q. I'm asking you about yourself; just speak for yourself—that's what you went there for?

A. Yes, sir.

Q. On the 14th day of December, 1897?

A. Yes, sir.

Q. How do you fix it as the 14th day of December, 1897?

A. I recall that because that's the day I arrived.

Q. And that is nearly ten years ago?

A. Yes, sir.

Q. And you know of your own knowledge that it was not only the year 1897, but that it was the month of December, and the fourteenth day of that month? A. Yes, sir.

Q. And you swear to that positively?

A. Yes, sir.

(Testimony of H. Fay.)

Q. And you are just as certain of that as you are of anything else you have testified to in this case?

A. Yes, sir.

Q. What time of day was it on the fourteenth day of December when you arrived at Haines?

A. Well, I don't recall as to the time of day.

Q. You remember the day specifically—now, can't you remember the time of day?

A. I remember the day of the month, because I made a memorandum of it.

Q. Have you got that memorandum with you?

A. No, sir, I have not.

Q. When did you last see it?

A. I haven't seen it for years.

Q. You haven't seen it since the fourteenth day of December, 1897, have you?

A. Oh, yes, at different times; because my lot location was dated on the 14th day of December, 1897, and that impressed the date on my mind.

Q. What do you mean by your lot location?

A. When we located our lots there we paid our money to a man that claimed to have some connection with the land or recording office at Dyea, and we got a receipt.

Q. Now, who was that, Mr. Fay?

A. His name was Ostrander.

Q. And John Y. Ostrander was at Haines on the 14th day of December, 1897, was he?

A. No, he wasn't; but our location notices bear that date.

(Testimony of H. Fay.)

Q. Well, what did you say about Ostrander; when was he there?

A. No, not Ostrander; I believe it was Hanbury his name was.

Q. What was his other name?

A. I don't recall now.

Q. What did he look like?

A. I couldn't say.

Q. How old a man was he?

A. I couldn't say as to that.

Q. Did he have a beard? A. I don't know.

Q. Did he have a moustache?

A. I don't know.

Q. Well, who else was there beside this man Hanbury? A. Tim Vogel.

Q. Do you swear positively that you saw him there at the time?

A. He was in his building—

Q. Do you mean Hanbury was in Vogel's building? A. Hanbury was in Vogel's building.

Q. Did Tim Vogel have a building there at that time?

A. He had one later on, not in December 14th, 1897; no.

Q. When did Tim Vogel put his building there?

A. I can't recall just at present.

Q. When was Hanbury there in his building?

A. I can't recall as to the date.

Q. How long after you located your lot before this man Hanbury was there?

A. I can't remember as to the exact time.

(Testimony of H. Fay.)

Q. You remember back about December 14th, 1897, specifically and positively, and yet you can't remember what Hanbury looked like, how old he was, or when he came there, or when Tim Vogel put his building there?

A. Well, that's ten years ago, and a man don't take close and particular observation of every man he meets.

Q. You mean to swear positively on your oath, Mr. Fay, that there was ever a man there at Haines representing himself as an agent of the recorder at Dyea?

A. Well, we paid him our money.

Q. You paid him your money?

A. We paid him our money.

Q. Who do you mean by we?

A. We locators.

Q. Who else besides yourself paid this man Hanbury any money, now, Mr. Fay, will you tell me that?

A. Spooner paid him money.

Q. Where is he? A. I don't know.

Q. He's gone, isn't he? A. Yes.

Q. Who else?

A. I speak for myself, let them speak for themselves.

Q. Now, sir, you said "we" paid this man Hanbury our money; I ask you now, sir, who "we" is and you say yourself and Spooner, and Spooner's gone—who else?

A. I can't say positively who else.

Q. You won't swear, sir, that anybody else be-

(Testimony of H. Fay.)

side you and Spooner paid that man money, and Spooner's gone?

A. I won't exactly swear that Spooner did—I know I did.

Q. When you said "we" then you meant "I," and you won't swear positively now, sir, that anybody beside yourself paid him money—isn't that the fact? A. No, I won't.

Q. Mr. Fay, you said you went to Haines on December 14th, 1897? A. Yes, sir.

Q. Who did you go there with?

A. I went with Al James for one—

Q. Where is he? A. I don't know.

Q. Is he one of the parties to this suit?

A. No, sir.

Q. He is gone out of the country, isn't he?

A. I don't know.

Q. How long since you have seen Al James?

A. I haven't see him in four or five years.

Q. Who else did you go with?

A. John Penglase.

Q. Where is he?

A. He is in business at Douglas, I understand.

Q. How long since you have seen him?

A. I don't believe I have seen him in four years.

Q. What was he doing at Chilkat on December 14th, 1897? A. I don't know.

Q. You know he was over there at Haines on December 14th, 1897, do you—sure of that?

A. Yes, sir.

Q. Who else did you go with?

(Testimony of H. Fay.)

A. Billy Dickinson.

Q. Where is he? A. I don't know.

Q. How long since you have seen Billy Dickinson?

A. I guess it must be—well, it's a long time.

Q. Well, who else did you go to Haines with?

A. There was a party by the name of McLoughlin.

Q. Where is he? A. I don't know.

Q. How long since you have seen him?

A. Not for many years.

Q. Is he a party to this suit? A. No, sir.

Q. Now, who else?

A. This man W. W. Warne was there.

Q. That's the same man you have been testifying on direct examination is it? A. Yes, sir.

Q. Who was he?

A. The Presbyterian Missionary at Haines.

Q. Located at Haines? A. Yes, sir.

Q. What was he doing at Chilkat on December 14th, 1897?

A. He wasn't at Chilkat, he was at the Mission.

Q. Oh, your party went from Chilkat, and when you got over to Haines you just took Warne into your *confidence*, that it?

A. No, sir, we went to Warne for advice.

Q. Then you didn't go from Chilkat over to Haines to locate lots in company with Warne?

A. No, sir.

Q. You struck him at Haines, and he was the Presbyterian Missionary in charge of this Mission?

(Testimony of H. Fay.)

A. Yes, sir.

Q. Where is Warne?

A. Why, I don't know as to a certainty, but the last time I heard from him he lived somewhere; I think Norwich, North Dakota.

Q. How long since you have seen this man Warne? A. Not in many years.

Q. Who else was with you?

A. I named Penglase, Billy Dickinson, McLoughlin, Warne, and Spooner.

Q. Well, who was Spooner?

A. He was a surveyor—well, I don't know whether he was with the Perry-Humbert expedition—some outfit anyway, he was in their employ.

Q. Where is Spooner? A. I don't know.

Q. Gone, isn't he? A. I believe so.

Q. How long since you have heard from Spooner?

A. I haven't heard from him since he left.

Q. Is he a party to this suit? A. No, sir.

Q. Now, who else went with you?

A. I can't recall the names of the rest.

Q. The only persons that went with you over on this locating expedition were the ones you have just mentioned excepting Warren—and he was already at Haines—are the only ones you remember?

A. Well, Spooner was at Haines.

Q. Spooner was already at Haines?

A. Yes, sir.

Q. The only ones you remember that left Chilkat on the 14th day of December, 1897, and came to

(Testimony of H. Fay.)

Haines to locate lots were yourself, McLoughlin, Billy Dickinson and Penglase? A. Yes, sir.

Q. And they are not parties to this suit, are they?

A. No, sir.

Q. All right, now, Mr. Fay. You came over there to Haines because you heard some talk of railroad at Haines—that right? A. Yes, sir.

Q. To be instigated, or built, or commenced by this Perry-Humbert expedition?

A. Yes, sir, the Perry-Humbert and others—there was others besides that expedition; there was railroad talk in connection with—

Q. Didn't you know, sir, at that time that Sol Ripinski had bought out Mrs. Dickinson's rights to that land? A. No, sir.

Q. Didn't know that?

A. No, sir.

Q. Nobody told you that? A. No, sir.

Q. You never saw a deed from Sol Ripinski to—or a deed from Sarah Dickinson to Sol Ripinski at the time you went over there? A. No, sir.

Q. Didn't Billy Dickinson tell you about it?

A. No, sir.

Q. You swear, sir, that you didn't know a thing about it? A. Yes, sir, I do.

Q. When you got over to Haines did you find—I believe you testified you didn't find anything but some houses on this cleared tract now called the Ripinski Homestead as shown on Plaintiffs' Exhibit No. 1?

(Testimony of H. Fay.)

A. Only the natives on the beach—I was alluding to the disputed strip.

Q. Well, that's what I'm talking about. Did you find any buildings on the ground immediately south of the tract called the Ripincki Homestead?

A. Nothing only the Mission property here—you allude to the disputed strip?

Q. Did you find anything in the way of improvements to the south of the cleared portion of what is called the Ripinski Homestead—on the beach down there *sit*, south of that and to the north of the Mission ground? A. Here?

Q. To the south of that and north of the Mission grounds?

A. Yes, to the north of the Mission ground.

Q. Did you find any improvements along here?

A. Yes, between here and there.

Q. Between the Ripinski Homestead, between Corner No. 8—that is between the line running from Corner 8 and Corner No. 1 and from the line running from Corner No. 7 to the beach, did you find anything in there?

A. There was nothing there other than the tent I put up on that ground, which I got permission from Mrs. Dalton to do as we received freight in there from the Chilkat store.

Q. You got permission from Mrs. Dalton?

A. Yes, sir.

Q. What did she have to do with it?

A. She claimed she bought a half acre from Mrs. Dickinson, this comes in after you know.

(Testimony of H. Fay.)

Q. I am talking, sir, about the 14th day of December, 1897?

A. I found nothing there at that time.

Q. Now, you know at that time that Mrs. Dalton claimed that one acre down there, didn't you?

A. No, sir.

Q. Don't you know, sir, as a fact, that Spooner knew that Mrs. Dalton claimed to have bought that one acre from Mrs. Dickinson, and that Spooner settled with Mrs. Dalton and bought the land just west of the line between Corners 7 and 8 on that plat?

A. That was after December 14th, 1897, that we learned that; we didn't learn that December 14th, 1897—didn't know Mrs. Dalton had any claim there at all; but we learned subsequently that Mrs. Dalton had about a half an acre from Mrs. Dickinson.

Q. What land did McLoughlin locate there?

A. Not any.

Q. What land did McLoughlin locate there?

A. He located the northern part of Block No. 1.

Q. The whole northern part?

A. No, part of the north part; I couldn't be certain as to the particular lot.

Q. Well, now, you located up here you say, Lot No. 4 in Block No. 1, is that right?

A. Yes, sir.

Q. And you built some houses there, and have got them there at this time? A. Yes, sir.

Q. How much did your horses cost you?

A. Of course the houses themselves don't represent a very great expenditure, but—

(Testimony of H. Fay.)

Q. All right; how much does your interest in this alleged townsite of Haines represent to you—how much would you sell out for.

A. Well, I haven't given that a thought—in fact I haven't anything there to sell.

Q. Hasn't it any value at all?

A. Well, you must admit that I want my own property and I don't want to sell it as long as the place suits me.

Q. Can you put a value on it—you can do that whether you want to sell or not, can't you?

A. No, because I don't want to sell.

Q. It is of such a great value to you that you wouldn't sell it under any consideration; is that right?

A. Well, as long as I like the place I don't want to sell it, but of course there is such a thing that I might sell it, yes.

Q. How much pecuniary outlay have you made on this alleged townsite, Mr. Fay?

A. I never kept any track of it.

Q. Well, approximate it?

A. Well, I don't—

Q. Understand, Mr. Fay, I don't want to get you down to a certain price in order to force you to sell at that and make an offer to you, but just an estimate?

A. I don't know.

Q. Can't you give us any estimate at all?

A. Of what I consider I have put in there?

Q. Yes; how much money you have invested in this alleged townsite or the alleged lot you claim?

(Testimony of H. Fay.)

A. This lot here?

Q. No; all the property that Sol Ripinski is claiming?

A. I don't know, I'm sure.

Q. Well, would you say five thousand dollars?

A. I haven't kept any record of what I have expended on this property at all, Mr. Jennings.

Q. Mr. Fay, do you mean to tell me you can't approximate how much this investment stands you to-day?

Oh, yes, I could guess at it, it would only be approximately what this investment stands me here—

Q. Well, that's what I want, an approximation, if you can't give it exactly?

A. Well, I should judge about five thousand dollars.

Q. Now, not only that Mr. Fay; that is approximately you think the amount of your financial outlay at Haines, Alaska?

A. On this particular property.

Q. In addition you have built up a business, have you not?

A. Yes, sir.

Q. And that is quite a valuable business for you?

A. Yes, sir.

Q. You wouldn't want to leave your business there?

A. No, sir.

Q. And in addition to that have you taken up any other lots there?

A. No, sir.

Q. Have you made any other financial outlay than you have stated?

A. Yes, sir.

Q. Such as what now?

(Testimony of H. Fay.)

A. Well, I have bought a piece of property up about here a little piece.

Q. That is outside the Sol. Ripinsky tract?

By Mr. LYONS.—That is north of the tract?

A. Yes, sir.

By Mr. JENNINGS.—So that if Sol Ripinsky wins this lawsuit and gets what he claims as his land it represents to you a loss of at least five thousand dollars in cash and the breaking up of your business, does it not? A. Yes, sir.

Q. So you are substantially and materially interested in this case, are you not, Mr. Fay?

A. Yes, sir.

Q. Now, Mr. Fay, you say that since Sol. Ripinsky—since you came there, Sol. Ripinsky never made any improvements on his piece of land, that is on the main body of his land,

A. Above where he is doing business, no.

Q. Will you please tell me what you would have done as an owner or an alleged owner of this parcel No. 4 in block 1 if Sol. Ripinsky had gone upon the land you claimed and attempted to make an improvement upon it?

Objected to by counsel for the plaintiff as immaterial and not proper cross-examination.

A. I would certainly ask him by what authority or right he was going on there.

Q. You would have resisted his coming on there and trying to improve your land?

A. I would want to know why he would claim it and I would certainly claim it.

(Testimony of H. Fay.)

Q. You claim the ownership of that land?

A. Yes, sir.

Q. You took it up? A. Yes, sir.

Q. And you wouldn't consider that Sol Ripinsky would have any right to come on there and improve your land? A. No, sir.

Q. And you would have resisted him, would you not?

A. Yes, sir; I would have at least protested.

Q. And so would anybody else that had any claims; you wouldn't allow Sol. Ripinsky to come on your land and improve it, would you?

A. No, sir.

Q. You don't think it very remarkable that Sol. Ripinsky claims this land and hasn't improved it—that he never made any more improvements, do you?

Objected to by counsel for plaintiff as immaterial and not proper cross-examination.

A. Well, he didn't claim it.

Q. Just answer my question, Mr. Fay. I'll ask you another question—Mr. Fay, how could Sol. Ripinsky make any other improvements than the improvements he did make on that particular piece of land called the Ripinsky Homestead that black space down here on this exhibit No. 1, when there were thirty or forty other men up here claiming to own and have the exclusive possession of these other lots.

Objected to as irrelevant, immaterial and not proper cross-examination and on the further grounds that the law defines the method by which one can improve his land—it isn't for the witness to state that.

(Testimony of H. Fay.)

A. These lots were not all claimed at that time, December 14th, 1897.

Q. I am not talking about that Mr. Fay; you were asked by Mr. Lyons what other improvements Sol Ripinsky had made not on December 14th, 1897, but at any other time. I am asking you, sir, how Sol. Ripinsky could make any other improvements outside of this little tract of land when it was all overrun by people claiming the other lots.

A. It was never all overrun.

Q. Never overrun wasn't claimed at all was it?

A. Yes, sir.

Q. There are lots then that were not claimed by anyone?

A. I stated the west end of this tract there are no lots marked on it at least not built on.

Q. That's the only part is it?

A. Yes, sir, part of block No. 6 there.

Q. Well, Tim Creeden had lots there, didn't he?

A. Is it there now, let's see.

Q. Up here?

A. He has one there now, the original I don't believe is there.

Q. Was there one there when this plat was made?

A. He says there was.

Q. I am not asking you what he says; will you tell me what house there was on lot-parcel No. 9 in block No. 2?

A. There is a fence around this that is marked W. W. Warne here; Warne had put that up; it was made of long poles piled one on top of the other.

(Testimony of H. Fay.)

Q. I didn't ask you about fences; I asked you what house there was on parcel No. 9 in block No. 2 on Plaintiffs' Exhibit No. 1?

A. Well, there was a foundation there of a house.

Q. Does it show on this map? A. No, sir.

Q. What house is there on parcel No. 10 block 2?

A. There is a foundation on that, too.

Q. What do you mean by foundation?

A. I mean these three lots marked W. W. Warne were enclosed with a fence on each of these parcels 9, 10 and 11, there was a foundation on those.

Q. Now, what house is on parcel No. 12 in block No. 2? A. Let's see; this is owned by—

Q. I didn't ask you who it was owned by; I asked you what there is on there.

A. There is a residence there.

Q. A residence on that parcel?

A. Just let me explain this; there is two houses on here—

Q. I am not talking about those; I am asking you about parcel No. 12.

A. I want to explain how this was.

Q. I am not talking about parcel No. 14, Mr. Fay, I am talking about parcel No. 12 in block 2.

A. This is a parcel of ground that belonged to Carl Bjornstad what is now parcel 12, 13, 14, which was all enclosed with a fence and these are the houses that are on this ground and this is all garden here.

Q. What do you mean by this?

A. On parcel No. 14 are the two houses that are on

(Testimony of H. Fay.)

this ground and it is all claimed by the one party and this is all garden they have for these houses.

Q. Then there is nothing on lot 12 in block 2?

A. There is a garden.

Q. I didn't ask you about garden; I said house.

A. You said anything in the way of improvements, I thought.

Q. Is there anything on lot No. 13 in block 2?

A. No, sir.

Q. Is there a house on parcel 12, in block 3?

A. Well, there are lots of houses here. I don't know for a certainty whether there is a house on here or not.

Q. Is there *is* a house on lot 9 in block 3?

A. That's been sold lately and I don't know; there are some improvements going on, I don't know for a certainty.

Q. Is there a house on parcel No. 2 in block 5?

A. Yes, sir, there was, but in the survey that was made when these houses were put on their lots—no, there is no house there.

Q. Is there a house on lot 3 in block 5?

A. Well, now, this house you see marked on parcel No. 1 in block 5 that belongs to this party.

Q. Which party?

A. This party here, M. E. Handy.

Q. The man whose name appears on parcel No. 2 in block 5?

A. In measuring off they didn't get it accurate, as the surveyor when this house was put on here of course the man thought he was putting it on the line.

(Testimony of H. Fay.)

There are two houses indicated on lot 1 in block 5; one belongs to the party claiming that lot and the other to the party claiming lot 2 in block 5.

Q. The party that claims it? You mean the man whose name is on this claim the one here?

A. Yes, sir.

Q. You swear to that do you?

A. Well, he told me he owned it.

Q. You mean to say M. E. Handy told you he owned the house on parcel 1 in block 5?

A. Yes, he owns the house.

Q. And he told you that? A. Yes, sir.

Q. When was that?

A. He put the house there—well, when he put it there he didn't get it with the correct measurements the surveyor has put it there it is on this lot but it is his house.

Q. You swear to that? A. He told me so.

Q. When did he tell you?

A. I was agent for the man—

Q. Answer my question, when did he tell you that?

A. Well, I wanted to tell you how I knew it.

Q. I asked you, sir, when he told you that?

A. Well, the circumstances that surround the transaction—

Q. I asked you again when he told you—when, when?

A. When I turned the house over to him.

Q. When was that?

(Testimony of H. Fay.)

A. That was about approximately, I should judge, three or four years ago.

Q. All right, Mr. Fay. Now, is there any house on parcel 3 in block 5? A. No, sir.

A. Is there any house on parcel No. 12 in block 4?

A. No house, but there is a garden there.

Q. Is there any house on parcel 11, block No. 4?

A. No, sir.

Q. Is there any house on parcel 10 in block 4?

A. No, sir.

Q. Parcel 9 in block 4? A. No, sir.

Q. Parcel 7 in block 4? A. No, sir.

Q. Parcel No. 12 in block 5? A. No, sir.

Q. Parcel 11 in block 5? A. No, sir.

Q. Parcel 10 in block 5? A. No; no house.

Q. Or 9 in block 5?

A. No, not on any of these.

By Mr. LYONS.—On any of what, Mr. Fay?

A. No houses on parcels 7, 8, 9, 10, 11 and 12 in block 5.

By Mr. JENKINS.—Is there any house on parcel 5 in block 5? A. No, sir.

Q. Is there any house on parcel No. 6 in block 3?

A. Yes; there is the remnants of an old baker-shop there.

Q. Don't you know, Mr. Fay, the man—the surveyor that made this plat, Mr. Davidson, is required to put on maps and plats any improvements there are on the property—don't you know that?

Objected to as irrelevant, immaterial and not proper cross-examination.

(Testimony of H. Fay.)

A. No, I do not.

Q. You don't know anything about that?

A. No, sir.

Q. If he is required to do it he hasn't done it, then, as I understand you to say?

Objected to by the counsel for the plaintiff as immaterial, the evidence of the witness and the map being the best evidence.

A. He has not.

Q. This man, Billy Dickinson, was the son of Sarah Dickinson, wasn't he?

A. Yes, sir—when I say he hasn't I take it this way; for instance, you see now there is a house on lot 5 in block 3. Well, right next to this is the remnants of the old baker-shop. There was a baker who done business there and part of his building is still there.

By Mr. LYONS.—That is on lot 6?

A. Yes, sir, lot 6 in block 3; and there is no indication of it on the map nor anything to show it was on that lot, so it is omitted altogether from the survey.

By Mr. JENNINGS.—Now, you say you went there on the 14th day of December, 1897, and found no one living there except the natives; can you locate on this Plaintiffs' Exhibit No. 1 about where the natives' houses were?

A. Yes, sir; it was approximately along here.

Q. Well, put a mark there and mark it "N" about where the natives' houses began.

A. Well, the natives' houses were along here—you want me to mark it on the map?

(Testimony of H. Fay.)

Q. Yes, sir; mark it "N"; I don't expect you to get it exactly correct but just approximately where they began, where the Indian village was at the beginning.

A. I don't know where the beginning was at that time.

Q. You know where the first house was?

A. Well, the Indian village ran along here.

Q. Marked approximately with the letter "N" where the first Indian lived along the beach?

A. At that time in 1897?

Q. Yes, sir.

A. I don't know; I didn't go down to investigate this at all where the Indian houses started in.

Q. Can't you give us any idea about how far it was the first native house was from the line of the Mission?

A. No, I couldn't, because as I say on December 14th, 1897, I didn't go down to the Indian village.

Q. How do you know then there wasn't anyone living down there but Indians?

A. I don't know as to that; there might have been white people.

Q. Where was the first house, about how far to the north of the Mission line was the first house whether Indian or not?

A. Well, the first house was here, the store Mrs. Dickinson had.

Q. How far to the north of Mrs. Dickinson of that house you just now mentioned was the next house?

A. The next house was approximately about there.

(Testimony of H. Fay.)

Q. On the Ripinsky Homestead?

A. Yes, sir.

Q. Well, how far from that to the north was the first native house?

A. I don't know. We knew these houses were there because Billy Dickinson pointed them out to us and we weren't interested in anything beyond that.

Q. Then you couldn't give us any idea as to where the native village began? A. No, sir.

Q. Can you give us any idea where it begins now?

A. Yes, sir.

Q. Well, put it down there.

A. Well, it began right about here—shall I mark it?

Q. Yes, mark it "N." (Witness marks.) Now, that's where the first native house is now. That's what's called Blind Isaac's, isn't it?

A. Yes, sir.

Q. And for all you know that house was there in 1897? A. Yes, sir.

Q. The fact of the matter is you haven't seen any new native houses going up there, have you?

A. Between that and Ripinsky's Homestead; no, sir.

Q. I congratulate you, Mr. Fay; I think you've got it just right; you needn't put this in the record, Mr. Gillette, but for once I think Mr. Fay is right.

By Mr. LYONS.—I insist that the statement of counsel go in the record.

A. We refer to all of these houses as on the Ripinsky Homestead; that's the way it is marked.

(Testimony of H. Fay.)

By Mr. JENNINGS.—And that place marked “N” is understood as Blind Isaac’s house, isn’t it?

A. Approximately, yes.

Q. And has been known as Blind Isaac’s house, ever since you’ve been there, hasn’t it?

A. Yes, sir, I think it has.

Q. Now, you say, Mr. Fay, when you came over there on December 14th, 1897, you found a brush fence along the track marked “Mission.”

A. Yes, sir.

Q. About how far out was that? How long was it, how far back from the beach did it extend?

A. Well, we didn’t go any further than that.

Q. Than what is marked 3d Street there?

A. We didn’t go further than block No. 2.

Q. But the fence still existed going on further out?

A. I don’t remember how far the fence—in fact, didn’t take any particular notice but I didn’t notice it along there.

Q. You know you went further than that, but how far you don’t know—is that what I understand?

A. I don’t know; no, sir.

Q. But you know it went further?

A. I don’t know that it went any further than here?

Q. You say than here; what do you mean by that? Describe it so the Referee can get it in the record.

A. The brush fence, I don’t know that it sent any further than the west end of block No. 1; I took

(Testimony of H. Fay.)

particular pains to notice that far because most of our work was around here.

Q. But you wouldn't swear one way or the other as to how far the fence extended?

A. The brush fence; no, sir.

Q. Well, now, you came over there on December 14th, 1897, and located a lot marked with your name on there? A. Yes, sir.

Q. And located it by clearing a little patch and putting your tent on it? A. Yes, sir.

Q. Did you clear that lot? A. Yes, sir.

Q. Did you clear the whole lot?

A. Yes, sir.

Q. You are sure of that are you, Mr. Fay?

A. Yes, sir.

Q. Did you grub it, clear off the ground?

A. We chopped down all the trees—that is, I had it done; I didn't do it myself.

Q. On that day, December 14th, 1897?

A. Not just that day; no, sir.

Q. Well, how long after?

A. I started in and had it cleared just shortly after, the next day; and from that time on, of course, it took time to do this work; you can't clear that kind of ground in a day by a long ways.

Q. Now, you say you located this lot; what do you mean by locating?

A. I went on there and put up a tent, and put our stakes in and the surveyor this man Spooner was with us when we located and showed us where

(Testimony of H. Fay.)

each of our locations would be by his stakes; he was one of our party.

Q. What did Spooner locate there?

A. He didn't locate anything.

Q. Now, that was December 14th, 1897; then what did you do?

A. When we got through, why we went to our respective homes after making the location.

Q. Went back to Chilkat, did you?

A. Yes, sir.

Q. You didn't undertake to live on that lot, did you? A. Not just at that time.

Q. Did you leave anyone there in the tent to live on it?

A. Just a few days afterwards I did, not the 14th day of December, I didn't.

Q. You went back to Chilkat? A. Yes, sir.

Q. And did you leave the tent there on the lot?

A. Yes, sir.

Q. What did you go back to Chilkat for?

A. I was employed over there in Kohler & James' store.

Q. Now, you did all that, Mr. Fay, on the strength of a railroad which you thought was coming in there? A. Yes, sir.

Q. And you went over there and located a lot and then went back to Chilkat? A. Yes, sir.

Q. And you never moved over there at all, did you, until after the Porcupine excitement began?

A. I didn't move over but I had a party in my

(Testimony of H. Fay.)

tent that came up from Juneau; he stopped there some time and he had a lot there.

Q. Who was that party?

A. His name was Tom Babbett.

Q. Where is he now? A. I don't know.

Q. When did you last hear from him?

A. I haven't heard from him since he left; he was manager for Dewey, I believe; he was a surveyor.

Q. When did he leave?

A. I can't recall; he came there shortly after we located, and he was with Bishoprick who was up here in Skagway.

Q. Never mind Bishoprick; I know him pretty well—too well, I guess.

A. They came here together.

Q. And that railroad boom all died out, it was a fake, wasn't it?

Objected to as irrelevant and not proper cross-examination.

A. I don't know.

Q. I am talking of the railroad scheme of the Perry-Humbert Expedition; that all died out and went to pot, and everything went to ruin—isn't that the fact?

A. Well, there was other parties that were talking railroad at the time.

Q. Well, there was nothing particularly to induce you to pay any attention to Haines? That's what I mean.

(Testimony of H. Fay.)

A. There was railroad talk as there is now, and we were all anticipating a railroad in there.

Q. Well, there was nothing in the immediate future, was there, that would lead you to the supposition that Haines might be a good town?

A. As I say, other parties was talking railroad.

Q. Well, who else?

A. Bratnober was over there, and there was some talk that he was going to build a railroad.

Q. Well, now, you went back to Chilkat; how long did you stay at Chilkat?

A. I stayed there over night and came back to Haines the next day.

Q. Well, what did you do between the time you went over there on the 14th day of December, 1897, and the fall of 1898 when the Porcupine excitement broke out—where did you live?

A. At Chilkat.

Q. You were still in business at Chilkat?

A. Yes, sir.

Q. Did anyone occupy your lot at Haines during all that time? A. Yes, sir.

Q. Who? A. Tom Babbett.

Q. Who else lived there?

A. M. W. Lane lived there at Haines during all that time; he was mail-carrier from Chilkat to Haines during the time that—

Q. Well, who else lived there?

A. Spooner lived there.

Q. This man, Spooner, that came over with you from Chilkat when you located your lots?

(Testimony of H. Fay.)

A. Yes; he didn't come from Chilkat; he was at Haines.

Q. Who else lived there? A. Tim Creedon.

Q. Where is he now?

A. He will be here Monday.

Q. Who else? A. Tim Vogel.

Q. Did Tim Vogel live there from December 14th, 1897, up until after the Porcupine excitement?

A. Well, Mr. Jennings, you asked me some time ago if I understood you right, if my place there had been occupied after December 14th, 1897, and up to the Porcupine excitement; now you are asking who else lived there?

Q. Yes, sir; that's just it, Mr. Fay.

A. Well, these other parties lived from that time, December 14th, 1897, up to the Porcupine excitement.

Q. Now, you have mentioned three people. Do you want to be understood as swearing that Tim Vogel was at Haines before the Porcupine excitement broke out? A. No, sir, I don't.

Q. Do you want to be understood as swearing that Tim Creedon was there and lived at Haines before the Porcupine excitement broke out?

A. He told me so.

Q. I don't care what he told you; do you know? Did you ever see his house there at the time?

A. No, sir.

Q. Do you mean to be understood as swearing on your oath, sir, that this man Spooner had a house there before the Porcupine excitement broke out?

(Testimony of H. Fay.)

A. Yes, I believe Spooner's house was there before the Porcupine excitement broke out.

Q. You mean the house that Spooner built on the land he acquired from Mrs. Jack Dalton, don't you—part of that one acre she owned, that's where he lived?

A. Well, there was a conflict in regard to the property—

Q. And Spooner gave in and bought from Mrs. Dalton, didn't he?

A. He bought from the original locator, and the conflict came on later between Spooner and Mrs. Dalton.

Q. And he settled with Mrs. Dalton?

A. Yes, sir.

Q. At that time—up to the time of the Porcupine excitement, it was well understood among yourself and associates that Mrs. Dalton claimed one acre that she bought from Mrs. Dickinson, was it not?

A. No, sir.

Q. From the time you went there up to the Porcupine excitement?

A. No, sir; she claimed a half acre.

Q. You're sure of that now?

A. That's the way I understood it—let's see; no, I guess it was an acre of ground she claimed; yes, that's right.

Q. Do you mean to swear, Mr. Fay, that your man Babbett lived on this lot of yours from December 14th, 1897, up to the time of the excitement, and you lived at Chilkat?

A. No, sir.

(Testimony of H. Fay.)

Q. How long did this man Babbett live on this lot, this No. 4 Parcel No. 4 in Block 1, after the 14th day of December, 1897?

A. Babbett came there a very few days after I located that, and he wanted to come over and—

Q. I don't care for that; you understand my question, sir? How long did this man Babbett live in this tent you say you erected on Parcel No. 4 in Block 1?

A. I can't recall, it was quite a long time he lived there and bached and made it his home.

Q. Did he live there three months?

A. I don't know.

Q. Two months? A. I don't remember.

Q. One month? A. I don't know.

Q. Two weeks?

A. I don't just know the time—that's quite a while ago.

Q. Well, he was your agent and tenant, you ought to know how long he was there.

A. He was no agent of mine.

Q. And you don't know how long he stayed there at all? A. I do not.

Q. You never paid much attention to your lot it seems to me, Mr. Fay?

A. I can't recall just the length of time he stayed; it was some little time, and he left some of his things with me when he left.

Q. What did he do with the tent?

A. My tent?

Q. Yes? A. It was there when he left.

Q. What did he do with it when he left?

(Testimony of H. Fay.)

A. Nothing.

Q. Didn't he return it to you?

A. It was there. In the meantime I kept improving this, this lot of mine, having it cleared up; there was a whole lot of timber on it and it took quite a long time to do the clearing, especially when the timber and growth is heavy.

Q. That hasn't anything to do with the tent, has it?

A. I didn't do anything with the tent.

Q. Did anyone live in it?

A. At different times, yes.

Q. You just left the tent standing on your lot then?

A. Yes, sir.

Q. And you went to Chilkat and lived there. Now, you returned there in the fall of 1898 when the Porcupine excitement came on?

A. Oh, I would have business at Haines all the time; we received our freight at Haines at different times and some at Chilkat; so I had occasion to come to Haines very often in the interest of the parties I was working for. We received a good deal of our freight at Haines, and so I would have business at Haines practically every day—every time a boat would come in.

Q. But when did you move over to Haines to live? You didn't move there until the Porcupine excitement in the fall of 1898, did you?

A. No, sir.

Q. And at that time a great many people came to Haines and located and settled there, didn't they?

A. Yes, sir.

Q. Two or three hundred of them?

(Testimony of H. Fay.)

A. Yes, there was quite a lot of them; they were a moving population; kept coming and going, and didn't stop at Haines.

Q. They simply overran this tract of land, and settled wherever they wanted to, didn't they?

A. Yes, sir.

Q. And paid no attention whatever to Sol. Ripinski?

A. There was nobody that knew anything about land that Sol. Ripinski claimed only where he kept a store there,—after this excitement started up.

Q. You say you didn't—you didn't know?

A. Yes, sir.

Q. How do you know nobody else knew?

A. Of course nobody—I mean myself—may be better for me to speak for myself.

Q. Now, this independent lot you're talking about that Sol. Ripinski bought from Barnett and Barnett bought from a man by the name of Bigelow—was that the long, tall fellow they called "Long Shorty"?

A. Yes, sir.

Q. He's in the penitentiary now?

A. I heard so; yes.

Q. You sold to Long Shorty? A. Yes, sir.

Q. He is one of the original men that overran this whole tract here, isn't he? A. No, sir.

Q. He took up a lot himself, didn't he?

A. I don't think so.

Q. Do you mean to tell me, sir, that Long Shorty wasn't one of the original jumpers of this tract of land?

(Testimony of H. Fay.)

Objected to as immaterial, irrelevant, and not proper cross-examination; and there is no evidence that there was any "jumping" or "overrunning" of this property.

A. Long Shorty was living with a native woman down on the beach in Indian town.

Q. Well, Long Shorty sold to Barnett, you say?

A. Yes, sir.

Q. You sold to Long Shorty and he sold to Barnett?

A. Yes, sir.

Q. Did you ever see the deed from Barnett to Sol Ripinsky?

A. No, sir.

Q. You don't know how Sol Ripinsky came to buy that lot, do you?

A. No, sir.

Q. You don't know whether Long Shorty and Ben Barnett even recognized that this lot was on Sol Ripinski's land, do you?

A. No, sir.

Q. Now, you say you had "frequent" conversations with Sol Ripinski about renting a house down there for dances; can't you fix the date when you had the first conversation with him about that?

A. Oh, no; I can't do that. There is a Peniel Mission in the building now, and I guess they have been there about three years; and we have an A. B. Hall there now where dances and little festivities are pulled off, and consequently we have no necessity for the Sol Ripinski building any more.

Q. I am asking you, sir, if you can fix the date when you had the first conversation with Sol Ripinski about renting that building for any social purpose?

A. No, sir.

(Testimony of H. Fay.)

Q. Was it before or after you sold to Barnett?

A. It was after I sold to Bigelow.

Q. Was it before or after Bigelow sold to Barnett?

A. It was after Bigelow sold to Barnett.

Q. Was it before or after Barnett sold to Ripinski?

A. As to that, I don't know when Barnett sold to Ripinski.

Q. You don't know a thing about that?

A. No, sir.

Q. Mr. Fay, when you first went over there on December 14th, 1897, to locate a lot, you didn't locate this Lot No. 4 in Block No. 1 at that particular time, did you?

A. Part of it; not all of this over here. There was a little conflict in regard to that, that is, I located it over this way a little.

Q. Which way?

A. A little east of the present boundary lines of Lot No. 4 in Block No. 1.

Q. That is to say, it came over on to what is called the Dalton acre, didn't it? A. Yes, sir.

Q. And Jack Dalton protested to you, and made his protest so strong, that you moved over on to Sol. Ripinski's land? A. No, sir.

Q. You didn't have any trouble with Jack Dalton then? A. Yes, sir.

Q. He protested, and you got off?

A. Well, we had a meeting—

Q. Never mind; I don't care about any meeting—

(Testimony of H. Fay.)

By Mr. LYONS.—I protest against counsel interfering with the witness while he is giving his answers.

Q. I don't care about any meeting—you got off that acre, didn't you?

A. Yes, sir; Mrs. Dalton claimed it—Jack didn't.

Q. Well, she is the wife of Jack Dalton?

A. Yes, sir.

Q. And you paid attention to her protest, and got off?

A. Yes, sir.

Q. Why didn't you tell her that she and Mrs. Dickinson never owned the land—that Mrs. Dickinson never owned the land, and therefore she had no right to it?

Objected to as not proper cross-examination, incompetent, irrelevant and immaterial.

Q. You say that was all virgin wilderness there; why didn't you tell Mrs. Dalton when she protested about you being on her land that she bought from Mrs. Dickinson—why didn't you tell her that Mrs. Dickinson never owned the land and therefore she didn't own it—why didn't you tell her that?

A. I don't know.

Q. When did you learn you were on the acre claimed by Mrs. Jack Dalton?

A. I don't remember.

Q. Well, was it before or after the Porcupine excitement?

A. I can't recall as to that.

Q. Well, was it before or after your man Babbett had left there?

A. It was after Babbett left there, I think—I'm not certain as to that.

(Testimony of H. Fay.)

Q. I think that's all, Mr. Fay.

By Mr. LYONS.—I suppose it may be understood at this time that each party to the suit pays for his own examination of the witnesses; that is, we pay for our own direct examination of our own witnesses and our cross-examination of your witnesses, and that you do the same? We ought to have some understanding about how the Referee is to be paid.

By Mr. JENNINGS.—Yes, that is satisfactory to us; when the record is made up, the Referee can just estimate from the record and charge the parties accordingly.

Redirect Examination (Witness H. FAY).

By Mr. LYONS.—I believe you testified that the improvements which you made on the lot that you claim in Haines are worth substantially five thousand dollars? A. Yes, sir, approximately.

Q. I now call your attention to a Record styled "Town Lots" or named "Town Lots, Transcribed from original Juneau Record, Misc. May, 1898, to June, 1898," and called—which records are taken from the Skagway recording office, and I call your attention to page 242 and ask you if you are familiar with the location notice or what is marked a location notice close to the bottom of that page?

A. Yes, sir.

Q. Did you make out that location notice, or the location notice of which that is a copy?

A. Did I make it out, do you mean?

Q. Yes, sir; draft it? A. Yes, sir.

(Testimony of H. Fay.)

Q. What property is referred to in that location notice?

Objected to as incompetent, irrelevant and immaterial and not the best evidence.

A. Parcel No. 4 in Block 1, Haines.

Q. This location notice is dated December 14th, 1897; was it drawn on that date—made out on that date? A. No, sir.

Q. When was it made?

A. It was made out a few days after that; we went around and staked the lots and put our notices on the stakes—the survey stakes that were made by the surveyor.

Q. Well, you see it is dated December 14th, 1897; what does that indicate?

A. That indicates that the lots were located on that day, December 14th, 1897, and so it was stated on the location notice.

Q. All right, Mr. Fay. Now, counsel for the plaintiffs desires to read this record into evidence, styled “Town Lots Transcribed from the original Juneau Record, Miscellaneous, May, 1898, to June, 1898,” which book is now one of the records of the Skagway recording office, Skagway, Alaska.

Counsel for the defendant objects to the reading of the notice into the record on the ground that it is immaterial, irrelevant and incompetent, and because there is no authority shown for the subdivision of the land there at Haines into lots and blocks; and there is no authorized plat and no plat at all in evidence by

(Testimony of H. Fay.)

which the words "Lots 3, 2 and 4 Block 1" can be identified.

By Mr. LYONS.—We will offer the plat in evidence later.

"NOTICE OF LOCATION—TOWN LOT.

Lot 3, 2 and 4, Block 1, Haines.

Notice is hereby given that I, the undersigned, a citizen of the United States over the age of twenty-one years, have located and do hereby locate and claim for residence or business purposes that certain lot or parcel of ground situate in the town of Haines in the District of Alaska, known and designated as Lots 3 and 4 in Block 1 as shown in the survey and plat of said town made by Walter Fogelstrom, Civil Engineer,

Dated December 14th, 1897.

HARRY FAY,
Locator."

A. I would like to state that when I say this is indicated by Lot 4 in Block 1, it is indicated there as number three and four because I did move from a part of Lot 3 up a ways, you see, so the original location takes or did take in part of 3 and 4; but when Mrs. Dalton claimed we was on her ground we had this meeting among ourselves and we finally agreed to move up so it wouldn't conflict; so it takes in practically 3 and 4 of the original location in Block 1.

Q. You procured a record of that location notice to be made, did you? A. Yes, sir.

(Testimony of H. Fay.)

Recross-examination.

By Mr. JENNINGS.—Mr. Fay, this notice Mr. Lyons just read reads as follows: “Notice of Location of Town Lots 3, 2 and 4, Block 2, Town of Haines”?

By Mr. LYONS.—Just read that notice further down, Mr. Jennings; you will find that Lot 2 isn’t included.

By Mr. JENNINGS.—I see; that location notice said lots 3, 2 and 4 Block 1, Haines, and further down in the location notice itself lot No. 2 is left out. Now many lots did you locate there? A. One.

Q. Why do you call it 3, 2 and 4 then?

A. I located, as I said before, one hundred feet square, we original locators; and when the surveyors come around they took and said that lots thereafter would be fifty feet front, and while I located one lot, I was marked as two lots; and then thereafter, any lots located were fifty feet front and 140 feet in depth, while my original location was one lot 100x100.

Q. You say when “we” had a meeting and decided; you mean you and Spooner and McLoughlin and you original men that went over there and located? A. Original locators; yes, sir.

Q. How many of you were there?

A. About six of us.

Q. You were the only ones, about six of you, who affected to locate lots, and lay out that town by lots and blocks and to lay out the streets, weren’t you, and got a man by the name of Fogelstrom to make a survey? A. We were part of them; yes, sir.

(Testimony of H. Fay.)

Q. And when Jack Dalton protested that you were on his wife's ground, it was very easy for you to set the stakes up towards the Mission line, wasn't it?

A. Yes, sir.

Q. And you did that in total disregard of the rights of anyone except Jack Dalton?

A. Not up to the Mission line, but in a westerly direction from my east line.

Q. Isn't that the Mission line?

A. I wouldn't call it to the Mission line; no.

Q. You wouldn't call it up to the Mission line?

A. Let's see; yes, I guess it would be; yes, sir.

That's all.

[Testimony of G. W. Hinchman, for the Plaintiffs.]

G. W. HINCHMAN, being first duly sworn on behalf of the plaintiffs, then testified as follows on

Direct Examination.

By Mr. LYONS.—Please state your name.

A. G. W. Hinchman.

Q. Your residence and occupation.

A. Residence, Haines, Alaska; I'm a miner by occupation.

Q. You're one of the plaintiffs in this action?

A. Yes, sir.

Q. How long have you lived in Haines, Alaska?

A. I would like to ask in the first place, do you mean since I actually began residing there permanently, or—

Q. Yes?

A. Let's see; well, I have made Haines my home since 1899.

(Testimony of G. W. Hinchman.)

Q. When did you first go to Haines?

A. February 13th or 14th, I'm not sure the day; in the spring of 1899.

Q. Are you familiar with the whole town or village of Haines? A. I am.

Q. Are you familiar with all of the tract of land in controversy in this action. A. I am.

Q. I now call your attention to Plaintiffs' Exhibit No. 1, and ask you if you are familiar with all of the tract included within the lines on that plat shaded yellow? A. Yes, sir.

Q. And you say you first saw that tract on or in February of the year 1899? A. Yes, sir.

Q. Now, describe that tract of land as you first saw it.

A. Well, of course, there was part of that tract I didn't pay much attention to; the ground was covered with snow at the time, and around down here I didn't notice—

Q. Now, whenever you say "around down here," indicate the part of the map so the Referee can get it.

A. Well, the part that says Ripinski Homestead; I won't say positively but I didn't notice any large timber on that part. And the place here known as Lot 1 in Block No. 1 there was a hotel there at that time, and there was houses—there was a house on Lot No. 1 in Block No. 2, but I wouldn't say whether there was any more real houses there or not; but there was tents and frames in different places all over the strip as far as I could see; of course I wasn't on the strip excepting as I stopped in the hotel going up.

(Testimony of G. W. Hinchman.)

The main part of that strip was covered with heavy timber, and in many places they were just cutting the timber and putting up tents and foundations.

Q. What kind of timber was the tract covered with? A. Hemlock and spruce, mainly.

Q. Have you had any experience in clearing land, Mr. Hinchman? A. Yes, sir, I have had some.

Q. How extensive has that experience been?

A. Well, mainly in clearing where I resided in Haines, Lots No. 11 and 12 in Block No. 3 there.

Q. Where you reside?

A. It is marked Lot No. 8 there, but according to the old plat it was lots 11 and 12, and where it is marked 7 there, it was 12.

Q. In Block No. 3? A. Yes, sir.

Q. Do you now reside there? A. Yes, sir.

Q. The two lots that are marked numbers seven and eight in Block No. 3 are your lots, are they?

A. Yes, sir.

Q. Is there any building on Lot No. 7?

A. There is. There wasn't when this map was made; but there was at one time, I have seen a house on there in the fall of 1899 and at other times, but it was burned down in the fire that burnt over a part of Haines—I forgot what year that was, but I think in 1903.

Q. How long have you occupied those two lots?

A. Since the fall of 1903.

Q. How did you acquire possession of them?

A. I bought them; bought the one that shows the house on there I think it was from M. W. Lane—I wouldn't be positive as to his initials.

(Testimony of G. W. Hinchman.)

Q. Which lot is that?

A. It is known on here as Lot No. 8.

Q. In Block No. 3 on this Plaintiff's Exhibit No. 1?

A. Yes, sir, in Block 3, and I got the other one from Bjornstad, who bought from M. W. Lane.

Q. When did you purchase these lots from Lane and Bjornstad?

A. As to the exact date—from Lane I purchased in the fall, but whether it was in October or November—I think it was in October, but I wouldn't be positive, of 1903.

Q. When did you buy from the other man?

A. Well, it was a year later—Bjornstad—I think it was the year following, but I wouldn't be positive as to that.

Q. What improvements were on the lots when you purchased them from Lane and the other man?

A. Well, the one I purchased from Lane there was a house on it, about one-third of the house you see marked there—this part, the small part of the house shown on lot No. 8 according to this survey.

Q. What improvements, if any, were on the other lot, No. 7?

A. There was a pile of logs on there that Bjornstad hauled to build a house to replace the one that was burnt down.

Q. Have you made any further improvements on these lots since you purchased them?

Objected to as immaterial and irrelevant.

(Testimony of G. W. Hinchman.)

A. I cleared lot No. 8 of most all the stumps and other debris, it was first all brush and trees on it, and stumps; and I cleared most all of that and got a portion of Lot No. 7 cleared.

A. Yes, sir, I built an addition to the house—well, I began right away after I bought it in May, and in about six months or a year I built an addition to it, and then I put up those logs into a house this spring.

Q. What logs?

A. Those logs that Bjornstad had on there, and used that for a woodshed, on Lot No. 7.

Q. Can you state approximately what the improvements you have placed upon those lots have cost you?

A. As near as I can remember, the amount they cost me in labor and improvements, would be between twelve and fifteen hundred dollars.

Q. And that includes—

A. Yes, the labor and money—total expense.

Q. That includes your own labor?

A. Yes, sir, includes my own labor I have put on the lots.

Q. And what did you pay for the lots originally?
Objected to as irrelevant and immaterial.

A. I paid sixty dollars for one, and did some work for the other one—don't know as I can't state the exact sum, because there was no sum stated—probably twenty-five dollars.

Q. For whom was the work done?

A. For Bjornstad. I couldn't say as to the amount because there was no exact amount named.

(Testimony of G. W. Hinchman.)

Q. Did Mr. Ripinski or anyone in his behalf ever protest against your occupying or improving those lots? A. No, sir.

Q. Did Mr. Ripinski or anyone in his behalf ever tell you he claimed those lots or any portion of them?

A. No, sir.

Q. Did Mr. Ripinski or anyone in his behalf ever claim to you that he owned a tract of land which included those two lots? A. No, sir.

Q. Mr. Ripinski has lived in Haines during nearly all the time since you have been there, hasn't he?

A. Yes, sir.

Q. And he could have seen you erecting those structures?

Objected to as irrelevant and immaterial, and calling for a conclusion of the witness.

Q. Well, he never protested against you erecting those buildings, you say? A. No, sir.

Q. And never asserted any claim or title to the land? A. No, sir; not to my knowledge.

Q. He never made that claim to you?

A. No, sir.

Q. Nor to anyone else to your knowledge?

A. No, sir.

Q. And no one in his behalf ever laid any claim to that land? A. No, sir.

Q. Did he ever post any notice indicating his claim, to that land—those lots?

A. Not that I ever seen or heard of—nor that anyone else seen that I know of.

(Testimony of G. W. Hinchman.)

Q. Now, you say you are familiar with the tract of land in controversy in this action. Are you familiar with all of the improvements that have been made on that tract?

A. Well, fairly well—fairly well, yes, sir.

Q. Are you sufficiently familiar to make an approximate estimate of the cost of clearing the land as it has been cleared, and erecting the buildings and improvements that are now constructed thereon?

Objected to—

By Mr. JENNINGS.—Well—can you form an estimate, that is all right—

A. Yes, I would say from—

Q. Well, he didn't ask you what the estimate was.

By Mr. LYONS.—What would you state, approximately, have the clearing and the building of the structures now on that tract cost?

Objected to as immaterial and irrelevant.

A. I would say from fifty to seventy-five thousand dollars.

Q. How long have you been acquainted with the defendant?

A. Well, I have known Mr. Ripinski ever since about the fall of 1899; I was in his store in the spring of '99 but he wasn't there, I don't think.

Q. You know where he lives in Haines?

A. Yes, sir.

Q. Where?

A. He lives in—you want me to designate the place?

Q. Yes, sir; on Plaintiffs' Exhibit No. 1?

(Testimony of G. W. Hinchman.)

A. In the place near the corner of this exhibit marked Corner No. 1, he has a store there.

Q. Is it right at Corner No. 1?

A. No, it is back a little ways from the beach.

Q. On the parcel marked "Ripinski Homestead" on this map? A. Yes, sir.

Q. On that parcel, represented there. Now, did you ever see Mr. Ripinski, since you have been there, improving any land included in this disputed tract west of the parcel that is marked "Ripinski Homestead"?

Objected to as immaterial and irrelevant.

A. No, sir.

Cross-examination.

By Mr. JENNINGS.—Mr. Hinchman, you say you first came to Haines in the fall of 1899?

A. No, sir.

Q. When did you first come to Haines?

A. In the spring of 1899.

Q. Who was there then?

A. There was several people there then; who, I don't remember.

Q. Was Sol. Ripinski there then?

A. He had a store there—at least I heard it was Ripinski's store, but as to knowing the fact at that time, I didn't.

Q. And who else was there?

A. A man by the name of Spooner—had a hotel there.

Q. Who else?

(Testimony of G. W. Hinchman.)

A. Tim Vogel had a kind of a hotel and saloon there too.

Q. Who else?

A. There were others—I didn't stay in the place but three days at that time.

Q. All you remember, though, is Sol. Ripinski and Tim Vogel?

A. Yes, there was another man by the name of De Haven—he wasn't doing anything there then that I know of, and another man I met by the name of O'Connor.

Q. He isn't a party to this suit, is he?

A. No, sir.

Q. And how long did you stay there at that time?

A. It was three or four days—I wouldn't be positive.

Q. Did you take up any lot at that time?

A. No, sir.

Q. And you knew at that time that Sol. Ripinski was claiming that land didn't you?

A. No, sir, I did not.

Q. You didn't know there was a controversy right then between Ripinski and these men he calls jumpers?

A. No, sir, I did not.

Q. Who did you meet there at the time, did you meet Sol. Ripinski on that trip?

A. No, I don't think I did.

Q. Did you meet Tim Vogel?

A. Yes, I just saw him is all.

Q. Didn't meet him to talk to him?

A. No, sir.

(Testimony of G. W. Hinchman.)

Q. Did you meet Mr. De Haven to talk to him?

A. No, sir, not on any special subject; just about the Creek, I was going up to Porcupine.

Q. Did you meet Spooner? A. No, sir.

Q. You didn't talk to any one at that time about who owned or claimed that land?

A. No, sir.

Q. In fact you didn't care—you were on your way to the strike on the Porcupine?

A. Yes, sir.

Q. The matter as to who owned that land wasn't discussed by any one in your presence at the time?

A. No, sir.

Q. And you went on into the Porcupine?

A. Yes, sir.

Q. How long did you stay there?

A. Not any time at all—I went on over to Nugget Creek and stayed there that summer.

Q. Then you never came back until the fall of 1903?

A. Yes, sir, I came back in the fall of 1899.

Q. And who was there at Haines then?

A. There was a good many people there then.

Q. Who?

A. Well, there was Mr. Vogel, Mr. Spooner—no, Spooner wasn't there then; and Kernan, Warner—

Q. You don't mean the Missionary?

A. No, it was a man that bought from Spooner—

Q. Never mind who bought; I didn't ask you that—now, that's all you remember?

A. No, sir, there were several others.

(Testimony of G. W. Hinchman.)

Q. Who else?

A. Well, Joe Chisel, Mr. Weitzmann—

Q. Now, you're sure of that, are you?

A. I'm sure of that, sir.

Q. You're sure Mr. Weitzmann was there?

A. Yes, sir.

Q. In the fall of 1899? A. Yes, sir.

Q. All right, all right—go ahead now—wait a minute; did you see Mr. Weitzmann there at the time? A. Yes, sir.

Q. Did you talk to him? A. Yes, sir.

Q. You mean R. L. Weitzmann, one of the plaintiffs in this case, do you?

A. I guess so; that's the gentleman over there.

Q. One of the plaintiffs in this case, who runs a store down there at Haines?

A. Yes, sir, he was running it there then, too.

Q. Now, who else?

A. M. W. Lane—I think that's his initials; and Ed Adams, C. G. De Haven, Tim Creedon, and Campbell—I don't remember what his initials are now—

Q. And that was in the fall of 1899?

A. Yes, sir.

Q. Did you take up a lot there then?

A. No, sir.

Q. Did you talk to anybody about it?

A. No, sir.

Q. Had these men you just mentioned taken up lots there?

(Testimony of G. W. Hinchman.)

A. I think so; they were living in houses around there.

Q. Did you discuss the question as to who that land belonged to around there?

A. Not that I remember of.

Q. Did you hear anybody discuss it?

A. I may have, and I may not; along about that time there had been a suit—

Q. Between Ripinski and—

A. Ripinski and those parties, I believe.

Q. And you heard them say they had won the suit and he had no more title to it, or no title to it—that is, his claim if he ever had one was forever settled? A. I know he had a suit; yes.

Q. And you knew what land it was there he was claiming?

A. No, only a part of it—that is, I knew he claimed part of the land around there but just what part of it I didn't know—they had a suit as to the boundaries as I understood it, and I heard it discussed somewhat at the time.

Q. All right—that was in the fall of 1899?

A. Yes, sir.

Q. And how long did you stay there then?

A. All that winter.

Q. Where did you live?

A. I lived in a house in Lot 6 in Block 4.

Q. Who owned that lot at the time—who pretended to own it?

A. Harry Fay, we rented it from him.

(Testimony of G. W. Hinchman.)

Q. One of the plaintiffs in this case, the gentleman on the stand just before you?

A. Yes, sir.

Q. Did he claim to own it at that time?

A. He either claimed to own or act as agent for someone else.

Q. You rented it from him?

A. Yes, sir, we did; I say we—I and two other fellows.

Q. That was in the fall of 1899?

A. Yes, sir.

Q. Where did you stay that winter?

A. At Haines.

Q. How did you make a living that winter?

A. We had that when we came there.

Q. Oh, you had a stake when you got back there?

A. Yes, sir.

Q. And you then stayed there the winter of 1899?

A. Yes, sir.

Q. Do you mean to say, sir, that during all of that time you never heard of Sol. Ripinski claiming to own that land?

A. All I heard was what I told you; that there had been a suit along that fall or summer, or there had been a suit and they had beaten him in the suit.

A. In 1899?

Q. In 1899?

A. I think it was the summer of 1899; anyway, it had been before that and I heard the talk of the suit, but the exact time of the suit of course I don't know because I wasn't in town at the time.

(Testimony of G. W. Hinchman.)

Q. Now, the winter of 1899 you stayed there; what did you do when the spring of 1900 came?

A. Went back up the creek.

Q. The Porcupine?

A. No, sir; Nugget Creek.

Q. And how long did you stay there then?

A. Until the fall of 1900.

Q. What did you do then?

A. Came back to Haines.

Q. Where did you live when you came back to Haines? A. The same house as the other time.

Q. Do you mean to say that you didn't know then that Sol. Ripinski was still claiming title to that land? A. No, sir.

Q. Don't you know, sir, that he filed Soldiers' Additional Homestead Scrip on the land about that time? A. No, sir.

Q. Didn't you, notwithstanding the issue of that suit, know that he was still claiming that land?

A. No, sir.

Q. And you never heard, after Sol. Ripinski lost that suit that he was still claiming that land?

A. No, sir.

Q. Never did? A. No, sir.

Q. Then, why didn't you take up a lot yourself?

A. Most everybody claimed the whole country there; there was houses and foundations on every lot that looked to be worth anything and they asked pretty good prices for them by the lot and I didn't want to lay out any money on a place that didn't look good to me.

(Testimony of G. W. Hinchman.)

Q. In 1900 the place was all claimed by somebody, was it?

A. Yes, sir, as far as I know; I didn't ask no great amount of questions; only asked about a few places around, and somebody seemed to claim most everything.

Q. There seemed to be a claimant for about every piece of property there, didn't there?

A. Yes, sir.

Q. Where did you go then, 1900?

A. Back up on the creek again.

Q. Nugget Creek? A. Yes, sir.

Q. How long did you stay there that trip?

A. All summer.

Q. That would bring you to the summer of 1901?

A. Yes, sir.

Q. Then, what did you do?

A. I came back and stayed in Skagway most of that winter.

Q. Then what did you do?

A. Went back to the creek again.

Q. Nugget Creek—in the fall of 1901?

A. No, the spring of 1901.

Q. And how long did you stay there then?

A. Until fall.

Q. In the fall of 1901, then what did you do?

A. I came back to Haines.

Q. Where did you live in Haines at that time?

A. I lived with C. G. De Haven.

Q. Point out the place on this map where you lived?

(Testimony of G. W. Hinchman.)

A. Well, it was on Lot 7 in Block No. 1 it is called on this map, De Haven and Creedon; I stayed there that winter.

Q. Did you hear anything about Sol. Ripinski claiming that land then?

A. No, sir. Oh, of course I heard a few claim that he was beat on his suit, but I hadn't heard he was claiming it since the suit.

Q. You never heard at that time that he still claimed it, and had filed Soldiers' Additional Scrip on it?

A. No, sir.

Q. Did any one ever tell you what kind of a suit that was?

A. No, sir.

Q. You don't know, then, it was a suit for all this land?

A. No, only as I heard conversations about it, that it was a suit for some part of the land there that covered a part of the townsite, I never knew how much.

Q. You never came back to Haines to live permanently then, until 1903?

A. Not permanently.

Q. The spring of 1903, was it?

A. Well, the winter of 1902 I built a house there.

Q. Didn't you know, sir, that Sol. Ripinski claimed that land at that time?

A. No, sir, and he don't even claim I did to-day.

Q. Now, where did you build?

A. Off of where the claims his homestead was.

Q. Off of that, was it?

A. Yes, sir, a block away from it.

(Testimony of G. W. Hinchman.)

Q. All right. Now, when did you build the houses on the lots you are claiming here, lots 7 and 8 in Block No. 3?

A. I built there in the fall of 1903.

Q. You bought that property, you say, from M. W. Lane and Carl Bjornstad? A. Yes, sir.

Q. And you put in hard cash for that property too, didn't you? A. Yes, sir.

Q. Didn't it ever occur to you as a wise man to find out who owned the property before you bought it?

A. I don't think, when a man holds a deed to a piece of land and nobody lays any claim to it, but what it ought to be considered a good title.

Q. But you never took any pains to find out whether Sol. Ripinski claimed the land?

A. I don't see that I had to hunt the country over to see if I couldn't find somebody to claim it.

Q. You didn't know whether Mr. Lane knew that Sol. Ripinski claimed that land, did you,—the man you bought from?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

A. No, sir, I do not.

Q. Do you know whether Mr. Bjornstad knew it?

A. No, sir.

Q. Did you ask any questions at all as to who owned that land? A. No, sir, because they—

Q. You knew at that time there had been a suit between Sol. Ripinski and Lane and these men that Sol. claims jumped his property, didn't you?

(Testimony of G. W. Hinchman.)

A. I knew there had been, but I didn't know whether it was about that or not.

Q. And you didn't know whether or not that suit had been appealed either, did you?

A. Yes, sir, I heard it had been appealed, and he was beaten on the appeal also.

Q. Who told you that?

A. I heard it discussed generally, I couldn't say.

Q. Did you know whether or not that was so?

A. No, I did not.

Q. Did you take any pains to find out whether it was so?

A. No; I only supposed that people talking about it knew.

Q. You say you bought from Lane in 1903 and from Bjornstad in 1904? A. Yes, sir.

Q. And you mean to say that this dispute between Sol. Ripinski and these alleged jumpers was on at the time? A. No, sir.

Q. You didn't know anything about it?

A. No, sir.

Q. You swear to that do you? A. I do.

Q. Didn't you ever get a registered letter from Sol. Ripinski warning you not to build on those lots?

A. I did not.

Q. You swear to that? A. I do.

Q. Didn't you ever get a registered letter from me, signed by R. W. Jennings, telling you that Sol. Ripinski claimed that land and for you not to build on it? A. No, sir, I did not.

(Testimony of G. W. Hinchman.)

Q. Now, you say your improvements there stand you about \$1,500?

A. Somewhere between twelve and fifteen hundred dollars.

Q. Then if Sol. wins this suit, you will be out about fifteen hundred dollars, won't you?

Objected to as not proper cross-examination.

A. I don't know the exact amount—I would be out considerable.

Q. Then you have that amount of interest in this case?

A. Yes, I should think I had that much interest in the case.

Q. Where do you live now?

A. I live in this same place, lots 11 and 12 in Block No. 3—or lots 7 and 8 according to this map.

Q. When did you first hear that Sol. Ripinski claimed those lots, number 7 and 8?

A. I should judge it was about a year or a little over ago, when he had some sort of a survey made through there.

Q. And that's the first time that you ever heard he claimed that land?

A. Yes, sir; that particular part of it; of course I knew there was some claim he had on some land there and he had a lawsuit over it and he had been beaten in the suit—that was my understanding of it.

Q. Are you a married man? A. Yes, sir.

Q. Have you got a family living down there at Haines? A. Just me and my wife is all.

(Testimony of G. W. Hinchman.)

Q. Living at Haines. Now, do you remember—did you ever hear any other of your coplaintiffs talking about registered letters they got from Sol. Ripinski warning them not to build on this tract and saying that he claimed that land?

A. I never heard of any registered letters; I heard some of them speak at one time about being warned by him.

Q. And you say you never were warned?

A. No, sir.

Q. How far is lots 7 and 8 from the place where Sol. Ripinski lived—how far is the property you claim from the property where Sol. Ripinski lived, his house?

A. About twelve hundred feet, I would think, from the map.

Q. Can you see your house from the place where Ripinski's house is?

A. No, sir, I don't think so.

Q. You have to go up kind of a rise there, don't you, to see Sol. Ripinski's house?

A. On this road—this is a public road here, and Sol. Ripinski and other people have to go along this road here or along that street there right in front of my house.

Q. I'm not asking you about that road; from where Sol. Ripinski lives, from where his house is on the beach, on the Ripinski homestead up to Second Avenue is quite an abrupt rise, isn't it?

A. Well, there is considerable of a rise there.

Q. Yes, sir; a person to see you building here

(Testimony of G. W. Hinchman.)

would have to go up Second Street there almost as far as your house?

A. Well, they would have to go up somewhere along Main Street.

Q. Now, how long did it take you to build your house?

A. The first part, I don't know the exact time, probably took three or four weeks—in fact, I couldn't state the exact time.

Redirect Examination.

By Mr. LYONS.—When you purchased those two lots, the men from whom you purchased them were in actual possession of the lots, were they?

A. Yes, sir.

Q. And they executed deeds to you for those lots?

A. Yes, sir.

Q. What portion of the town of Haines is included—

A. Well, excuse me; as to Bjornstad, I have no deed on record from him, but I have a deed on record for the other one.

Q. Did you procure a deed from Bjornstad?

A. No; he promised to furnish me one, but hasn't given it.

Q. What portion of the town of Haines, that is, the business and residential portion of the town of Haines, is included in this tract in controversy?

Objected to as immaterial and irrelevant.

A. I would judge there is from eighty-five to ninety per cent of it.

(Testimony of G. W. Hinchman.)

Q. With reference to the streets that are indicated on Plaintiff's Exhibit No. 1, is the street marked "Main Street" an open thoroughfare?

A. It is.

Q. Used by the people of the town of Haines?

Objected to as immaterial and irrelevant.

A. Yes, sir.

Q. Is Second Street an open street?

A. Yes, sir.

Q. Used by the people and the public as such?

A. Yes, sir.

Q. How about Third Avenue?

Objected to for the same reason as last above stated.

A. Well, it is plotted out as a street and is used some, not very much; hasn't been worked enough to be a good road.

Q. What about Fourth Avenue?

Objected to for the reason last above stated.

A. Well, there has been very little travel on it, in fact you can't use it as a wagon road at the present time, but there is a footpath through there.

Q. Is it platted as a street? A. Yes, sir.

Objected to as immaterial and irrelevant and not the best evidence.

Q. And it is respected as a street by adjoining lot owners?

Objected to as immaterial, irrelevant and indefinite.

A. Yes, sir.

(Testimony of G. W. Hinchman.)

Q. How about Fifth Avenue; is that an open thoroughfare? A. It is.

Objected to for the same reason as given as objection to the former questions about these streets.

Q. It is used by the public of Haines as a street?

A. Yes, sir.

Q. How about Sixth Avenue?

Same objection as last above.

A. It is plotted but not used.

Defendant moves to strike the answer as not the best evidence.

Recross-examination.

By Mr. JENNINGS.—When you say a street has been plotted, what do you mean—have you seen those streets platted? Seen the plat? A. I have.

Q. Whereabouts?

A. Well, there was one, they got several made—

Q. Who got several made?

A. The people of Haines.

Q. You say they have got several—you don't know whether they are official plats, do you?

A. I know who made one of them, there was one made—Oh, to *say swear* to it, of course, I couldn't swear, but there was one said to have been made by Fogelstrom, the surveyor.

Q. You don't know what authority he had to make that plat? A. No, sir.

Q. You don't undertake to swear that that is an official plat of the townsite of Haines, do you?

A. No, I don't think it would be considered that.

(Testimony of G. W. Hinchman.)

Q. Simply a drawing of what you people decided should be streets and lots and blocks?

A. Yes, sir; that's all we have got to go by at the present time.

Q. You don't know by whose authority it was made?

A. By the authority of the people of Haines.

Q. How do you know?

A. Because I heard them say so.

Q. You didn't authorize Fogelstrom to make that survey, did you? A. No, sir.

Q. You didn't authorize them to have your lots surveyed? A. No, sir.

Q. Then, how did you know it was made by the authority of the people of the town of Haines?

A. I heard Fay and Lane and some others say so.

Q. Are they the people of the town of Haines?

A. Part of them, yes, sir.

Q. Did you hear any one beside Fay and Lane say that?

A. Yes, I think Mr. Vogel said so too—I think he did.

Q. Who else did you ever hear say so?

A. I couldn't say all I have heard say so—Carl Bjornstad is another; any way, I heard enough people say so to convince me that it was made by their consent.

Q. The consent of the people you have named?

A. By the people of the town of Haines.

Q. But you don't consider them the people of the town of Haines, do you, Mr. Hinchman?

[Testimony of Tim Vogel, for the Plaintiffs.]

TIM VOGEL, a witness called to testify on behalf of the plaintiffs, being first duly sworn, on oath testified as follows on

Direct Examination.

By Mr. LYONS.—State your name, residence, and occupation.

A. Tim Vogel; I am in the liquor business at the present time.

Q. And you reside where?

A. Haines, Alaska.

Q. How long have you resided in Haines?

A. Since the spring of 1898.

Q. When did you first go there, what date?

A. I went there in February.

Q. Of the year 1898? A. Yes, sir.

Q. And you have resided there continually ever since?

A. Well, I left there soon after I came there and came back in April of the same year—I was there at the time they held the town meeting and organized in Spooner's hotel.

Q. When was that? A. In February, 1898.

Q. Then when did you build there, Mr. Vogel?

A. In April, 1898.

Q. Where did you construct your building?

A. On Block No. 2, Lot 1.

Q. As indicated on Plaintiff's Exhibit No. 1?

A. Yes, sir.

Q. What is the value of the improvements you have placed on that lot?

(Testimony of Tim Vogel.)

Objected to as irrelevant and immaterial.

A. At that time?

Q. Yes, sir.

A. Well,—oh, about \$3,000 worth of improvements at that time.

Q. And how much improvements have you placed on that lot during all the time you have lived there?

Objected to as immaterial and irrelevant.

A. About seven thousand dollars' worth.

Q. About seven thousand dollars?

A. All of that, yes, sir.

Q. What lot do you now own in Haines?

A. A part of Lot No. 1 in Block 2, and forty-five feet of Lot 2 in Block No. 2—front end of the lots.

Q. That's the property you own in Haines at the present time; you located that lot yourself, did you?

A. No, sir.

Q. Who located it?

A. I bought it from a man by the name of E. L. Wilson, a real estate dealer there—or rather C. J. O'Donnel bought it, a partner of mine.

Q. Do you know who did locate that lot in the first place?

A. No, sir; Mr. E. L. Wilson had the lot at the time; I bought it from him and paid him seventy-five dollars for it.

Q. When you bought the lot, were the boundaries marked? A. Yes, sir.

Q. How?

A. Well, there were posts at the corners; the surveyor put me on the corner of Block 2 Lot 1.

(Testimony of Tim Vogel.)

Q. Did you mark the boundaries yourself, then?

A. Yes, sir.

Q. Set corner posts, did you?

A. The surveyor set the corner posts for me, and the carpenters done the rest.

Q. He set the corners for you?

A. Yes, sir; so I could get the building square with the street.

Q. And you began building shortly afterwards, then? A. Yes, sir.

Q. You were one of the first residents of the town of Haines, were you not?

A. Almost; one of the first, yes, sir.

Q. And you know the town pretty thoroughly.

A. Yes, sir.

Q. What proportion of the town would you say is included within this disputed tract, what portion of the business and residential part of the town?

Objected to as immaterial.

A. Well, this tract is right on the main thoroughfare.

Q. And it includes what percentage of the business and residential part of the town of Haines?

A. I should judge about sixty or seventy per cent of it—right on the main thoroughfare.

Q. Do you know the defendant, Sol. Ripinski?

A. I do.

Q. When did you first see him?

A. The summer of 1898, at Chilkat.

Q. Did you ever see him at Haines at that time?

(Testimony of Tim Vogel.)

A. Yes, I used to see him at Haines that summer, too; he had a store at Haines, too, and his brother was running it.

Q. Did you see Mr. Ripinski in Haines before you purchased your lot from Wilson? A. No, sir.

Q. He was living at Chilkat, at the time, was he?

A. I believe so; I didn't get acquainted with him until about two months after, over there.

Q. Over where?

A. Over at Chilkat; I drove a team over there and got acquainted with him.

Q. Did Mr. Ripinski or anyone in his behalf ever object to you improving this lot that you bought there? A. Not at that time, no, sir.

Q. Did he know you were improving it?

Objected to as leading.

A. I suppose so; I was there all that summer.

Q. He never made any protest against you building on that lot? A. No, sir.

Objected to as leading.

Q. And never laid any claim to it?

Objected to as leading.

A. No, sir.

Q. How much of the tract of ground in dispute did Mr. Ripinski ever occupy at the town of Haines?

A. He occupied the part down on the beach and has a garden running up about a hundred and fifty feet, I should judge, back of his house.

Q. Where was that with reference to the tract marked on this plat as "Ripinski Homestead"?

(Testimony of Tim Vogel.)

A. It is right back—out here—right here.

Q. Well, on the tract marked Ripinski Homestead?

A. Yes, sir.

Q. Did you ever know of him doing any other improving on any portion of the disputed tract?

A. No, sir.

Q. Did you ever know of him asserting any title to any other portion of that tract?

A. At that time, no, sir, I did not.

Q. Now, is Haines laid off as a town?

A. It was that spring laid off, and we had it plotted, and it cost us two dollars a lot.

Q. That is, the citizens of Haines paid for having it surveyed?

A. Yes, sir.

Q. I hand you a plat now, and ask you if you ever saw that plat before?

A. (Witness examines.) I don't know as I have, that one.

Q. Did you ever see a plat similar to that one?

A. I have seen something similar to that plat of the town of Haines, all right.

Q. Now, you say you have expended on your property there about \$7,000?

A. Yes, sir; I'm in all of that now.

Q. Can you give an estimate of the cost of the clearing and building that has been done on the tract in dispute?

Objected to as immaterial and irrelevant.

A. Yes, sir; I should judge between sixty and seventy-five thousand dollars.

(Testimony of Tim Vogel.)

Cross-examination.

By Mr. JENNINGS.—Mr. Vogel, you went to Haines, you say, in the spring of 1898?

A. Yes, sir.

Q. And Sol. Ripinski had a store at Haines at that time, didn't he, and one at Chilkat?

A. And one at Chilkat, yes, sir.

Q. And when did you build your house there in Haines? A. In April.

Q. April, 1898? A. Yes, sir.

Q. About three thousand dollars you put in there then? A. Yes, sir; you bet we did.

Q. And you say you didn't know Sol. Ripinski owned any land there?

A. No, sir; not at that time.

Q. Did you try to find out whether he did or not?

A. I had no reason to.

Q. You didn't?

A. I never asked any questions; just went right on and built.

Q. And you never looked at the records, did you, to find out who had claims there? A. No, sir.

Q. You never came to Dyea to look at the records to see if there was any deed in favor of Sol. Ripinski to that land, did you? A. I did not.

Q. And you didn't care whether there was or not, did you?

A. Oh, I don't know; I generally try to content myself with what I am buying. There was no talk about it when I went down there; simply went down

(Testimony of Tim Vogel.)

there for an outing to spend the summer, and it didn't look very good to me.

Q. You just skirmished around and thought you saw a lot that you could take up?

A. I didn't take it up.

Q. I mean you thought you saw a lot there that looked good to you, and you thought you would take it?

A. I did not.

Q. You did take it, though?

A. I bought it.

Q. You saw a lot there that looked good to you, then, and you bought it and paid seventy-five dollars for it?

A. Yes, sir.

Q. And you never inquired whether the man that sold it to you owned it or not?

A. No, sir; he gave me a quitclaim deed to it.

Q. There wasn't anything on that land at the time?

A. No, sir; not a thing.

Q. Do you mean to say that you didn't know anything at that time about Sol. Ripinski claiming the land there, including that lot that you bought?

A. I did not.

Q. And that you didn't know anything about it until or before you built your house there?

A. I did not.

Q. When did you build your house there?

A. In April, 1898.

Q. Well, you say you have improvements on there now worth how much—seven thousand dollars?

A. Yes, sir.

Q. And that is on account of buildings and additions and improvements you have made there?

(Testimony of Tim Vogel.)

A. Yes, sir; I built an addition about four years ago.

Q. Have you built anything there within the last three years?

A. Why, a couple of little houses back—an ice-house and a little warehouse since.

Q. And you put them there after you got a registered letter signed by myself warning you that Sol. Ripinski claimed that ground?

A. Yes, I think I had a notice not to do any more building.

Q. A registered letter, signed by myself?

A. I had a notice not to do any more building; I didn't pay any attention to it.

Q. And you didn't any of you pay any attention to Sol. Ripinski's claim to that land either, did you?

A. Not after that; no.

Q. I mean in the spring of 1898, when you built?

A. I didn't know anything about Sol. Ripinski then.

Q. Didn't know anything about it at all?

A. No, sir; not until that fall. I met you and you served notice on me and I said to you that I didn't want any fight over it, and you told me, you says, "You're in for it now, and you can't get out."

Q. You're not talking about the registered letter now?

A. Yes, sir; I got that, I think, and I'm telling what you said a year or two after that. I got the letter.

(Testimony of Tim Vogel.)

Q. A year or two after that I told you you were in for it?

A. No, sir; that fall; the first time I ever met you you came down and served notice yourself individually on me right out in the street there, and I said I didn't know anything about the business, and didn't want to have any fight about it, and you said, "You're in now, and I can't declare you out."

Q. When was that?

A. Some time later, I believe, in September.

Q. Of what year?

A. Of 1898. I wouldn't swear it was September, but it was later on—I know it was quite stormy at the time.

Redirect Examination.

By Mr. LYONS.—Just a moment, Mr. Vogel. What was the condition of the ground there on this tract, Mr. Vogel, as to whether or not there was timber on it?

A. Well, there was nothing but big stumps where I was; I located on the worst-looking place in town.

Q. You didn't see Sol. Ripinski up there swinging the axe and trying to get the stumps out, did you?

A. No, sir; not with him.

Q. You never saw him doing any of that kind of work, did you?

A. I never saw him on that strip at all.

Q. Was the tract covered with timber when you first went there? A. Yes, sir.

Q. What kind of timber?

(Testimony of Tim Vogel.)

A. Hemlock, and spruce, and lots of alders in the swamps around there.

Q. And it is entirely cleared off now?

A. Well, around my portion of the town it is cleared.

Q. What portion of the town isn't cleared?

A. Well, two or three blocks back there is little scrubby timber around.

Q. Any on this tract? A. No.

Q. This tract is entirely cleared then?

A. Yes, with the exception of a few stumps.

Q. And by whom has that tract been cleared?

Objected to as irrelevant and immaterial.

A. By the people owning the property.

Q. You never saw Sol. Ripinski up there clearing any portion of it, did you? A. No, sir.

Q. Did you ever hear of him doing any clearing?

A. I did not.

Q. Ever hear of any one doing any clearing on his behalf? A. I did not.

Q. The street that is marked on this plat "Main Street"?

A. That's the main thoroughfare that goes up the Stucky, main road going towards the Porcupine.

Q. How about Second Street?

A. That's a fine street, yes, sir.

Objected to as irrelevant and immaterial.

Q. What about Third Avenue?

Same objection as last above.

A. Well, there is a trail there that Hinchman uses; wagons don't go through there.

(Testimony of Tim Vogel.)

Q. What about Fourth Avenue?

A. Wagons go through there all right.

Q. And that is used by the people of Haines as a thoroughfare, is it?

Same objection.

A. Yes, sir.

Q. What about Fifth and Sixth Avenues? Are they used by the people of Haines as streets and thoroughfares?

Same objection.

A. Yes, sir.

Recross-examination.

By Mr. JENNINGS.—Mr. Vogel, Mr. Lyons has asked you if you saw Sol. Ripinski on this tract clearing with an axe; you have seen other people digging around there, have you? A. Yes, sir.

Q. There were quite a number clearing land there? A. Yes, sir.

Q. With their axes and grub-hoes and crews, clearing off land?

A. I suppose most of them done it themselves, some of them hired, of course.

Q. Mr. Vogel, if Sol. Ripinski had come down there and took possession of your house and went to clearing off your lot and told you to get off, what would you have said to him?

Objected to as incompetent, irrelevant and immaterial.

A. I would tell him the same as I told you.

Q. What would you have told him—just let him have possession of your lot, wouldn't you?

(Testimony of Tim Vogel.)

A. No, sir.

Q. You would have resisted with force any attempt of his to come on to your property there, or what you claim?

A. Yes, sir; or any other man; you have got to show me.

Q. Then you speak for others, and say the same thing for them? A. I certainly do.

Objected to as not proper cross-examination, irrelevant and immaterial.

Q. Mr. Vogel, you testified that the citizens organized there in '98—they organized against Sol. Ripinski, didn't they? A. Not that I know of.

Q. What did they organize for?

A. To lay out the town and have it surveyed up.

Q. Didn't you organize to resist the claim of Sol. Ripinski?

A. I didn't know the gentleman at the time, spring of '98.

Q. That was in the spring of 1898?

A. Yes, sir; I went down on the beach and bought a few canned goods from his brother; then the second time when I came back I got acquainted with the Colonel.

Q. When was that?

A. Along that summer, probably about June when I met him.

Q. Was that after the famous meeting when you organized to resist the claim of Sol. Ripinski?

A. That was after I had built.

(Testimony of Tim Vogel.)

Q. You didn't meet Sol. Ripinski until after you had built? A. No, sir.

Q. He didn't know you, then?

A. I don't believe so.

Q. You don't know that he knew you were building then? A. I don't know as he did.

Redirect Examination.

By Mr. LYONS.—But his brother lived right there in town, and he could have seen you building?

A. Oh, yes; we were particular friends, his brother and me, and he lived right there in Haines.

Q. Sol. Ripinski lived in Chilkat at that time?

A. Yes, sir.

Q. How far is that from Haines?

A. About a mile and three-quarters, I guess.

Q. His brother could have notified you of any claim of Sol. Ripinski to that land?

A. Oh, yes; his brother and me were quite friendly.

Q. And Sol. Ripinski came over to Haines occasionally?

A. Oh, yes; I suppose he was over, but I never met him until some time during that summer.

Recross-examination.

By Mr. JENNINGS.—You don't know, as a matter of fact whether his brother ever did notify him that you were building there?

A. I do not.

[**Testimony of H. Fay, Further Cross-examination.**]

H. FAY, being called for further cross-examination by counsel for the defendant, testified as follows: (By Mr. JENNINGS.)

Q. Mr. Fay, I would like to ask you when it was that you first heard that Mr. Ripinski was claiming that land where you have your lots?

A. Well, I think it was in the fall of 1898, or the spring of 1899.

Q. When you took up that lot, did you make any examination of the records to see who owned that land?

A. No, sir; not the records—I applied to the local authorities, the local residents, to find out.

Q. Who were the local residents there at that time—I thought you were the first one there?

A. The Missionary.

Q. Mr. Warne? A. Yes, sir.

Q. Who else?

A. I also applied to Billy Dickinson to show me where the ground was his mother claimed.

Q. You didn't look at the records to see whether Sol. Ripinski had any claim there, did you?

A. There were no records there.

Q. If you had seen on the records a deed, a conveyance to Sol. Ripinski of the land between the Presbyterian Mission and Blind Isaac's house, you wouldn't have taken up your lot there, would you?

A. No; may I see that deed?

(Testimony of H. Fay.)

Q. No, I'm asking you; would you have taken that lot up?

A. Let's see—just ask that question again?

Q. If you had seen on the records a deed from Mrs. Sarah Dickinson to Sol. Ripinski conveying all the land lying between the Mission and Bling Isaac's house and running back to include fifteen acres, you wouldn't have located there, would you?

A. No, sir.

Redirect Examination.

By Mr. LYONS.—If you had seen a deed, Mr. Fay, by anybody, to a piece of Government land that there was nothing but the deed to show for it, absolutely no occupation, no improvements, nothing to indicate that the party making it had any authority to make it, would you think that would prevent you or anybody else from locating the land that it covered?

Objected to as leading.

A. No, sir.

Q. You don't know anything about that deed that counsel refers to, do you?

A. Why, I seen a deed that Sol. Ripinski was trying to get up after he laid claim to the ground there.

Q. When was that?

A. That was in the commissioner's court at Juneau; I don't recollect, but I think it was in 1899.

Q. Did you know what that deed described?

A. Yes, sir.

Q. And who executed it? A. Yes, sir.

Q. Before whom was it executed?

(Testimony of H. Fay.)

A. Before Sol. Ripinski; he was the notary and acknowledged it himself.

Q. He executed it for himself, then?

A. Yes, sir.

Q. He was the grantee and also the notary that took the acknowledgment?

A. Yes, sir; I haven't seen this deed; I don't know whether that's it or not.

Recross-examination.

By Mr. JENNINGS.—If you had seen a deed, a paper conveyance signed by Mrs. Dickinson, no matter who it was executed before, conveying this land to Sol. Ripinski, would you have attached any importance to it?

A. That would depend upon when the deed was made.

Q. If you had seen it at the time, the time you put your tent on that lot and took up this lot, wouldn't you have paid any attention to that claim of ownership?

A. I would certainly read it and take some notice of it, yes.

Q. You wouldn't have located there if you had seen such a deed, would you?

A. If I saw a deed like that, I wouldn't have paid any more attention to it than I would to anything else, for the simple reason that the deed was made out after we located there—the same deed that was in the commissioner's court.

Q. Now, Mr. Fay, answer my questions without any circumlocution or evasion—

(Testimony of H. Fay.)

Counsel for plaintiffs objects to the insinuation of Mr. Jennings, and insists that the witness has answered in good faith and without evasion or anything else of the kind.

Q. I asked you, sir, if you had seen a deed, a paper conveyance signed by Sarah Dickinson conveying all the land lying between the Mission and Blind Isaac's house to Sol. Ripinski, would you have paid any attention to it?

A. I wouldn't, if it was a deed like that; no, sir.

Q. I didn't say anything to you about what kind of a deed it was; I asked you if you would have paid any attention to such a deed as that, a paper conveying to Sol. Ripinski all the land lying between the Presbyterian Mission and Blind Isaac's house, would you have paid any attention to it?

A. No, I would not.

Q. Then, what did you mean by saying a little while ago, before Mr. Lyons took you on redirect examination, that you would have paid some attention to it?

A. Simply because I knew that deed was made out after the original locators there located there—that deed has been in evidence before, Mr. Jennings.

Q. That's the best answer you can give to that question?

A. Yes, sir; I thought that deed was a botch.

Q. Did you see that deed made out, sir?

A. No.

Q. Do you know who made it out?

A. No, sir; I do not.

(Testimony of H. Fay.)

Q. Do you know when it was made out?

A. Yes, sir; I do.

Q. How do you know, if you didn't see it?

A. Because, sir, I was at Chilkat at the time Sol. Ripinski wanted to get Baldwin to witness it.

Q. Do you mean to swear that the deed wasn't made out at the time it purports to have been made?

A. Yes, sir; I do.

Q. How long was that deed made out after you located that lot?

A. Well, the deed wasn't made out until after we made the locations there.

Q. Well, how long after?

A. I don't know how long after.

Q. Well, give us—you say you know the time when Grant Baldwin was called in to witness the deed; how long was that after you made your locations?

A. I know we located there before he got that ground.

Q. Answer that question, Mr. Fay, how long after you located that lot on December 14th, 1897, was it that that deed was made out?

A. That I don't know.

Q. You testified, just now, sir, that at the time Grant Baldwin was called in to witness that deed you had made your locations, didn't you?

A. I knew at the time it was after our locations.

Q. Well, how long after?

A. I can't say.

Q. The same day? A. I don't know.

(Testimony of H. Fay.)

Q. Was it a week after? A. I don't know.

Q. Was it a month after?

A. I don't remember.

Q. Then you don't remember anything about it, do you? Now, Mr. Fay, after you located this ground on the 14th day of December, 1897, you went back to Chilkat? A. Yes, sir.

Q. How long after you located that you went back to Chilkat?

A. I don't know; it took us some time to make our investigations in regard to finding where the ground was that Mrs. Dickinson claimed, and we were shown by her son Billy Dickinson, and also to find where the Mission line was and if there was any claim to the ground or any one he might know of.

Q. I asked you how long it was after you located your ground that you went back to Chilkat—that's an easy question, Mr. Fay, just answer me that.

A. I don't remember.

Q. Was it the same day, Mr. Fay?

A. I don't think so.

Q. Was it the next day? A. I don't know.

Q. And you are positive that at the time you went back to Chilkat on the 14th day of December, that Sol. Ripinski didn't own that land?

A. Yes, sir.

Q. Do you swear to that—that he didn't have that deed? A. Yes, sir.

Q. And you swear to that just as positively as you do to anything else you have testified to in this case?

A. Yes, sir.

(Testimony of H. Fay.)

Q. If that's false, everything else you have testified to is false?

Objected to as unfair, insulting, and not proper cross-examination or anything else.

A. Not necessarily.

Q. Well, you're just as positive of that as anything else you have sworn to?

A. That's what I say—he didn't have that deed when we located that ground.

Q. Don't you know, sir, that that deed was executed long before you located that ground?

A. I know it was not.

Q. Didn't you talk with Mrs. Sarah Dickinson about it? A. I did.

Q. And did she tell you she didn't own that land?

A. Yes, sir.

Q. Now, Mr. Fay, how much interest have you got in this lawsuit? A. I have one lot there.

Q. You have put in about five thousand dollars you said? A. Yes, sir.

Q. That is, in buildings and improvements?

A. Yes, sir; approximately.

Q. Now, Mr. Fay, if this deed had not been executed before the 14th day of December, 1897, the time you say you went back to Chilkat, could it have been put on record at Dyea on the 14th day of December?

Objected to as incompetent, irrelevant and immaterial, and instruct the witness not to answer the question unless counsel is fair enough to the witness to state his evidence as it is and also to exhibit the deed to the witness.

(Testimony of H. Fay.)

Q. You refuse to answer the question?

A. I do by advice of my attorney.

Q. Could it have been brought up here to Skaguay by the 15th day of December?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

A. I presume it could have.

Q. On the 16th day of December, could it have been gotten up here by the 16th?

A. I presume so.

Q. How far is Chilkat from Dyea?

A. I presume about twenty miles.

Q. Was there any means of communication between those places except by steamer?

A. No, sir.

Q. Was there any wharf at Haines at the time?

A. No, sir.

Q. No means of communication except what I have mentioned?

A. No, not other than boats—no mode of travel except that.

Q. Mr. Fay, I understood you to say, and to swear positively that Grant Baldwin came up there and witnessed that deed after you got back to Chilkat on the 14th day of December?

A. No, sir.

Q. You didn't swear to that?

A. No, sir.

Q. Why, sir, I understood you to say that you located your lot and went from there back to Chilkat?

A. Yes, sir.

Q. And after you got back on the 14th day of De-

(Testimony of H. Fay.)

ember, Grant Baldwin was called in to witness that deed? A. I didn't say on that day; no, sir.

Q. Well, then, you said after that?

A. Yes, sir.

Q. But how long after you're not willing to say?

A. No, sir.

Q. And you can't tell how long it was, whether a day, a week or a month? A. No, sir.

Q. Nor whether it was the same day or a week later?

A. No, sir; you must remember that's ten years ago.

Q. Yes, but you remember it was the 14th day of December, 1897, mighty well, don't you, that you located your lot?

A. That's impressed on my mind because I went there at that time and—

Q. And you remember about Grant Baldwin coming in to witness that deed, and you know, sir, that that deed is a very important matter in this controversy, and yet your mind can't go back to it enough to locate the time you returned to Chilkat between a week and a month—is that right? A. Yes, sir.

Redirect Examination.

By Mr. LYONS.—Did Mrs. Dickinson or anyone else have possession of that property that you now occupy when you went there? A. No, sir.

Q. Did anyone at all have possession of it?

Q. As I understood you to say, that was virgin forest there, virgin public domain?

A. Yes, sir.

(Testimony of John G. Morrison.)

Q. Did you think Mrs. Dickinson would have any power or right to convey that land to anyone if she wasn't in possession of it?

Objected to as incompetent, irrelevant and immaterial.

Question withdrawn.

[Testimony of John G. Morrison, for the Plaintiffs.]

JOHN G. MORRISON, a witness called on behalf of the plaintiffs, being first duly sworn, testified as follows on

Direct Examination.

By Mr. LYONS.—State your name, residence, and occupation.

A. John G. Morrison; Haines, Alaska; occupation, hotel and saloon business.

Q. Are you acquainted with Solomon Ripinski, the defendant in this case? A. Yes, sir.

Q. How long have you known him?

A. I have known him about five or six years or more.

Q. When did you first go to Haines?

A. I landed there the first of March, 1899.

Q. Have you lived there ever since?

A. From October, 1899, I have lived there pretty much all the time, yes.

Q. You own some property or premises there, do you? A. Yes, sir.

Q. What ground do you own there?

A. I own a half interest in Lot No. 1 in Block 1, and also in this lot here marked Lot No. 16 in Block 1.

(Testimony of John G. Morrison.)

A. You say you own a half interest in Lot 1 in Block 1? A. Yes, sir; also this Lot 16.

Q. Have done any improvements on those lots since you purchased them?

Objected to as immaterial and irrelevant.

A. Yes, sir.

Q. From whom did you purchase those lots?

A. From George Kiernan.

Q. Did you purchase both lots from him?

A. A half interest; yes, sir.

Q. And you own an undivided one-half interest in those lots at the present time? A. Yes, sir.

Q. In Lots numbered 1 and 16 in Block No. 1?

A. Yes, sir.

Q. And when did you become interested in those two lots?

A. In October, 1899, I think, or the first of November; I think it was the last of October.

Q. Do you know who the original locators of those lots were?

Objected to as immaterial and irrelevant.

A. Kiernan bought this lot No. 1 in Block one from Spooner—this lot he said he located there.

Q. That is, located Lot No. 16? A. Yes, sir.

Q. What improvements have you placed or done on those lots since you became interested in them?

Objected to as immaterial and irrelevant.

A. Well, this building here was in course of erection when I bought in.

Q. Indicate to the Referee, Mr. Morrison, what that is?

(Testimony of John G. Morrison.)

A. This is the Hotel Northern on this lot here.

Q. On the southeasterly corner, or the southerly end of Lot No. 1, isn't it? A. Yes, sir.

Q. That was in course of construction when you purchased it? A. Yes, sir.

Q. What other buildings have you constructed there?

A. Well, an icehouse about sixteen by twenty on this rear lot, No. 16, and I built a house on it about fourteen by twenty-four, with an addition, kitchen to it, that cost me about six hundred dollars and the icehouse cost about a hundred dollars.

Q. What have all of those buildings and improvements you have cost you and your co-owner, approximately?

A. Well, I should judge in the neighborhood of four or five thousand dollars without the furniture, just the buildings.

Q. Now, when you were constructing those buildings, did Mr. Ripinski protest against your building them?

A. In May, 1903, when I was building this little house here where I'm living I had a letter signed by R. W. Jennings—I don't think he ever signed it though.

Q. Don't think he was the one that wrote that?

A. No; it was a registered letter I got in the post-office—

Q. Was that the first protest you ever had from anyone on behalf of Ripinski? A. Yes, sir.

(Testimony of John G. Morrison.)

Q. You had done considerable building prior to that time?

A. Yes, they were all pretty well completed by that time.

Q. And how long had you been in possession of the ground at that time?

A. Well, from the fall of 1899 to May, I think, of 1902 or 1903.

Q. And Mr. Ripinski lived there in the town of Haines, and never during all of that time when the building was going on made any protest against it?

A. I never heard of it if he did.

Q. He was living there almost continuously?

A. Yes, sir.

Q. And you knew him quite well during all of that time? A. Yes, sir.

Q. Did you ever hear of Mr. Ripinski during that time, doing any improvement on any other part of this tract except the most easterly portion marked here "Ripinski Homestead"? A. Never.

Q. Did you ever know of him laying any claim to any other portion of that tract until you received the letter from, Mr. Jennings?

A. Oh, yes, I heard he laid claim to it and had a lawsuit and lost out on it prior to that.

Q. Did you know what lot or parcel he had the lawsuit over?

A. No, I don't know anything about that.

Q. Mr. Ripinski failed financially in Haines some time ago, didn't he, Mr. Morrison?

Objected to as immaterial and irrelevant.

(Testimony of John G. Morrison.)

A. Yes, sir.

Q. And made an assignment for the benefit of his creditors, didn't he?

Objected to as immaterial and irrelevant, not the best evidence, and leading.

Q. Well, he sold out at auction, made an assignment and went into the hands of a receiver?

A. Yes, sir.

Q. Who bought his property at that sale, do you know?

Objected to as immaterial and irrelevant and not the best evidence.

A. I bought it in for somebody else.

Q. At whose instance and for whom did you buy?

A. John F. Malony, of Juneau.

Q. For whom was John F. Malony acting at the time?

Objected to as immaterial and irrelevant to any issue in this case.

A. I don't know, sir.

Q. Did you ever have any conversation with Ripinski in regard to that matter?

Objected to as irrelevant and immaterial to any issue in this case.

A. No, I think not.

Q. Did he ever tell you he was afraid he was going to lose his lot there in Haines, which he occupies?

Objected to as immaterial and irrelevant, and leading, and an attempt to put the words into the witness' mouth.

(Testimony of John G. Morrison.)

A. Well, the day of the sale Malony told me to bid as high as five hundred dollars—

Objected to as hearsay.

—and if I remember right it went over five hundred dollars and Ripinski told me he was afraid he was going to lose it and I went higher than the rest and bid the property in.

Q. What property did you buy in?

Objected to as immaterial and irrelevant and not the best evidence.

A. The store and property.

Q. He didn't pretend to sell and you didn't buy in for Malony any other part of this tract?

A. No, sir.

Objected to as immaterial and irrelevant.

Q. Mr. Ripinski knew you were buying it in for Malony, didn't he?

Objected to as leading, immaterial and irrelevant.

A. I don't know.

Q. He didn't ask you to buy in any more or any other property except that where his store and improvements were?

Objected to as immaterial, irrelevant and leading.

A. No, sir.

Q. He didn't tell you at the time that he owned any other property there did he?

Objected to as leading.

A. No, sir.

Q. Now, you are quite familiar with the town of Haines are you not, Mr. Morrison?

A. Yes, sir.

(Testimony of John G. Morrison.)

Q. How long did you say you had lived there?

A. Since the fall of 1899.

Q. Can you state approximately what expenditures have been made on this tract in dispute, by the occupants of that tract?

Objected to as immaterial and irrelevant.

A. I should say between fifty and sixty thousand dollars, more or less—I think between fifty and sixty thousand.

Q. Is that settlement down there—how is it laid out?

Objected to as immaterial and irrelevant.

A. Well, the lots are footing on Main Street, some of them all the way out, and then there is some lots facing on what they call Dalton Street, opened up, and some laid off in avenues there.

Q. It is laid off as a town, is it?

A. I presume so.

Q. Platted into lots and blocks, streets and avenues? A. Yes, sir.

Q. Calling your attention now to the streets laid off on Plaintiffs' Exhibit No. 1, is Main Street used as a public thoroughfare by the people of the town of Haines?

Objected to as immaterial and irrelevant.

A. Yes, sir.

Q. Is Second Avenue? A. Yes, sir.
Same objection as last above stated.

Q. Opened up as a public thoroughfare?

A. Yes, sir.

Q. How about Third Avenue?

(Testimony of John G. Morrison.)

A. Well, there is a trail on Third Avenue, they travel it some.

Objected to and move to strike the answer on the grounds above stated.

Q. How about Fourth Avenue?

A. There's people living all in through here, Fourth Avenue, all in through there.

Q. What about Fifth Avenue?

Same objection as last above.

A. About the same as this, none of that graded out there. None of those are graded much there.

Q. Well, when you say none of them what do you mean?

A. Well, there is a road cut through, but none of those are graded out.

Q. Well, when you refer to a street there, state, so the Referee can get your answer,—what ones do you mean weren't graded out?

A. From Second Avenue up they aren't graded out good.

Q. They are used however as streets and thoroughfares by the people of Haines?

A. Yes, sir, they are used as streets.

Q. You went there in the fall of '1899?

A. I did.

Q. When you went there, was this disputed tract cleared or not?

Objected to as immaterial and irrelevant.

A. Oh, there was brush over some of it, and some of it I suppose was cleared.

Q. Is it all cleared now?

(Testimony of John G. Morrison.)

Same objection.

A. Pretty well cleared now; there may be some stumps on some parts there.

Cross-examination.

By Mr. JENNINGS.—Mr. Morrison, you say that you bought a half interest in parcel No. 1 in Block No. 1 from a man by the name of Kiernan?

A. Yes, sir.

Q. What was there on that particular piece of property on this survey No. 573 at the time you bought?

A. Well, there was the Hotel Northern going up.

Q. That large house in front there?

A. That's the Spooner house.

Q. I'm not talking about that; this lower one—that large house there that is nearly square in front, was that there? A. Yes, sir.

Q. What else was there?

A. This building here.

Q. Was there anything else?

A. There was a barn on Lot No. 1 there.

Q. Yes; the same as it is now, that was there?

A. Yes, sir.

Q. Was there anything else on there?

A. Well, a water-closet in the rear of it.

Q. Looking at Lot No. 1 in Block 1, I see three spaces marked there as representing buildings—were those there when you bought from Kiernan?

A. Yes, sir.

Q. You had nothing to do with the erection of them, did you?

(Testimony of John G. Morrison.)

A. I did with the erection of this in the rear, not with those others.

Q. You mean you have since added some to the hotel in front—is that what you mean?

A. No, the hotel was being built there at the time.

Q. Well, are there any other buildings on lot 1, Block 1, now that were not there when you bought in from your man Kiernan as you say?

A. No, sir, excepting the water-closet I built since, there is two now in the rear instead of one.

Q. Back of the saloon, one of these spaces here is the water-closet?

A. No, excuse me; that's what I call the icehouse and this is the cow barn, only all of the buildings there arn't marked, those I built after I bought in.

Q. Now, what is the other lot you have an interest in? A. This one.

Q. Parcel 16 in Block 1—and you half a half interest in them? A. Yes, sir.

Q. When did you buy that last one?

A. Kiernan located that in the fall of 1899—

Q. When did you buy that?

A. About that time.

Q. In the fall of 1899 you bought a half interest in that? A. Yes, sir.

Q. I see on that lot two places that apparently indicate buildings, were they on there when you bought?

A. No, sir, both of them were built since that.

(Testimony of John G. Morrison.)

Q. When was the building built that we now see on this plat Plaintiffs' Exhibit No. 1 lying to the north of that oblique line running through that lot?

A. That was built in the fall of 1899.

Q. Did you build any—when was the large building on that lot constructed?

A. In May or June, 1903.

Q. And it was while you were building that building that you got a registered letter from me as attorney for Sol. Ripinski? A. Yes, sir.

Q. Now, Mr. Morrison, to go back to lot No. 1 in Block 1; the hotel you have there isn't on any of the land claimed by Sol. Ripinski, is it? That is on what is called the Dalton acre, isn't it?

A. Yes, sir.

Q. Did you know at the time you bought from Kiernan that that was on the Dalton acre?

A. I did.

Q. And you know that Sol. Ripinski doesn't lay any claim to the Dalton acre?

A. I never knew anything about what he claimed at the time.

Q. Didn't you know at the time that he didn't lay any claim to the Dalton acre?

A. I did not.

Q. Didn't you, sir, know that Sol. Ripinski claimed this whole tract now in dispute in 1899?

A. I did not.

Q. Did you know, sir, that he had a lawsuit about those very premises there?

A. Not at that time, no, sir.

(Testimony of John G. Morrison.)

Q. You know that that suit was brought a year before that, don't you?

A. I didn't know a thing about it.

Q. Did you examine the records at that time to see who owned any lands north of the Mission tract?

A. I examined the records as to Lot 1 in Block 1, the deed that Kiernan got from Spooner.

Q. You simply examined, just examined the deed from Spooner to Kiernan? A. Yes, sir.

Q. Did that say the lot was located on the Dalton acre? A. I couldn't swear as to that.

Q. And that's the only thing you examined, was that deed? A. Yes, sir.

Q. And you had the deed to you from Kiernan for the same property made out the same way—is that the idea—to get the same description?

A. Yes, sir.

Q. But you never went to any records to look up whether Spooner had any title or not?

A. No, sir.

Q. At the time you bought from Kiernan, you saw you knew that Sol. Ripinski had had a suit over some property there and lost out?

A. No, sir, I didn't know it then.

Q. When did you find that out?

A. Some time after that.

Q. Well, how long after?

A. It might have been some time that fall or winter, or the spring following.

Q. At the time you built or located on parcel No. 16 in Block 1 you knew it, didn't you?

(Testimony of John G. Morrison.)

A. I knew he claimed something around there; didn't know that he claimed that at the time.

Q. Well, Mr. Morrison, you knew he had a suit about it?

A. Yes, sir, I knew it and I thought he was dead enough too.

Q. I suppose you're aware that people come to life again sometimes? A. Why, sure.

Q. You never consulted a lawyer to find out whether Sol. had any right of appeal, or whether that was a final settlement of his claim or not?

A. Never; no, sir.

[**Testimony of S. J. Weitzman, for the Plaintiffs.**]

S. J. WEITZMAN, a witness called on behalf of the plaintiffs, being first duly sworn, testified as follows on

Direct Examination.

By Mr. LYONS.—Please state your name, residence, and occupation.

A. S. J. Weitzman; residence, Haines, Alaska; occupation, merchant.

Q. How long have you resided at Haines, Mr. Weitzman? A. Since 1899.

Q. What time in 1899?

A. I came in 1898 in November or December—I don't remember exactly the time—and made a location there, and then I returned to Skagway and came back after New Year's, some time in January or February, I'm not positive just to the day.

Q. You say you made a location there—what do you mean by location?

(Testimony of S. J. Weitzman.)

A. For a residence and business.

Q. Where did you make your location?

A. Where I am now at the present time in business.

Q. I call your attention to Plaintiffs' Exhibit No. 1, and I ask you if you're familiar with the ground represented on that plat? A. Yes, sir.

Q. You are familiar with the tract in controversy in this case are you? A. Yes, sir.

Q. You're one of the plaintiffs in this action?

A. Yes, sir.

Q. Are you acquainted with Solomon Ripinski?

A. Yes, sir.

Q. Now, what lots did you locate at Haines in 1899?

A. I made a location on this lot right here, designated on this map number three in Block No. 1.

Q. Did you make any other location there at the time? A. No, sir.

Q. How did you locate that lot?

A. I put up a location notice.

Q. What else did you do?

A. I fenced it all around.

Q. You fenced your lot? A. Yes, sir.

Q. What did you fence it with?

A. With posts, and then I got wire and fenced all of it with wires.

Q. How many stringers of wire did you use?

A. Two stringers.

Q. How much of the lot did you fence?

A. Fenced the entire lot.

(Testimony of S. J. Weitzman.)

Q. And you say you also posted a location notice there? A. Yes, sir.

Q. Did that notice describe the lot you located?

A. Well, it described this parcel of ground; I didn't know at the time what this parcel would be numbered, but I claimed fifty feet by a hundred and forty feet.

Q. When did you construct this fence around your lot?

A. It was the time I put up my notice.

Q. And when was that?

A. In November or December, 1898.

Q. Was Mr. Ripinski in Haines at that time?

A. Not Sol. Ripinski, any way, for me to see him.

Q. Was his brother there?

A. His brother was there at the time, yes, sir.

Q. Where was Sol. Ripinski at that time?

A. He was in Chilkat.

Q. Did you construct any buildings on your lot there at that time, Mr. Weitzman?

A. Not at that time.

Q. When did you build after that?

A. I was at Skagway at that time; I was in business there at the time, had a store there and after New Year's; I couldn't say whether it was in January or February, 1899, I came to Haines and then I put up tents on these lots and put up a hotel, the one marked Porcupine Hotel and one for the store.

Q. Was Mr. Ripinski the defendant then at Haines? A. I didn't see him at Haines.

(Testimony of S. J. Weitzman.)

Q. Did you do any other improving of the lots there? A. None at that time.

Q. Well, did you at all? A. Yes, sir.

Q. When was the next time you did any improving?

A. I built in the spring of 1899, builded up houses where I was; stayed in the tents until I built.

Q. What kind of a house did you then build?

A. Frame house for the store.

Q. How large was that building?

A. That was sixteen by thirty.

Q. How many stories was it?

A. One story.

Q. What was the approximate cost of that building?

A. Well, that time of course it was very expensive building,—about a thousand dollars.

Q. And you built that building in the spring of 1899? A. Yes, sir.

Q. Was Mr. Ripinski in Haines at that time?

A. At that time I believe he was, yes.

Q. Did he make any protest against you building there?

A. Well, I had at that time purchased already that ground from Mrs. Dalton, in the spring.

Q. You purchased from Mrs. Dalton?

A. Yes, the same spring.

Q. Did Ripinski lay any claim to the land?

A. No.

Q. Has he ever laid any claim to it?

(Testimony of S. J. Weitzman.)

A. I believe he didn't lay claim to me personally; but I understood at that time he was claiming some ground and I didn't know whether this was the ground or not; I know I bought from Mrs. Dalton and paid her the money so it was with the consent of Mr. Ripinski I made the bargain, I made the bargain in his store.

Q. He was present when you made the bargain with Mrs. Dalton?

A. I'm not sure whether he was or—you see when I paid Mrs. Dalton for the lot I heard at the time there would be a lawsuit about who claimed it with the people in the spring of 1899, and so as to be sure I wouldn't come into the lawsuit with Mr. Ripinski if I paid out money Mrs. Bree had Mrs. Dalton as a witness and said with the consent of Mr. Ripinski I wouldn't be in that lawsuit.

Q. The tract that Sol. Ripinski now claims would include or includes a small portion of your house, does it not? A. Yes, sir.

Q. Has he ever made any claim of that portion of the tract to you? A. No, sir.

Q. Do you own any other lots in the town of Haines? A. Yes, sir.

Q. Where?

A. Lot here in Block 2—lots 4 and 5, and I also own lots in Block 1 number 12 and 13.

Q. Now, lots 12 and 13 in Block No. 1, you located those yourself, did you? A. No, sir.

Q. How did you acquire possession of them?

A. I bought them from the original locator Mr.

(Testimony of S. J. Weitzman.)

Cronin, he was the original locator I see on the plat there—and he had improvements up there, a hotel, and I bought all his improvements and these two lots.

Objected to on the ground that the complaint alleges those are the lots of R. L. Weitzman, and this is S. J. Weitzman.

Q. R. L. Weitzman is who—who is R. L. Weitzman? A. She is my wife.

Q. You own those lots, do you?

A. Mrs. Weitzman owns them.

Q. And she is your wife? A. Yes, sir.

Q. Have you ever done any improving of those two lots? A. Yes, sir.

Q. What?

A. I put up two houses on them and cleared them.

Q. What approximately has it cost you to clear the lots and put up the buildings you placed thereon?

A. About fifteen hundred dollars.

Q. Did Mr. Ripinski ever lay claim to those lots while you were improving them and building on them? A. No, sir.

Q. Did anyone on his behalf ever lay any claim to those lots? A. No, sir.

Q. Nobody, neither himself or any one for him, ever protested against your taking possession of those lots? A. No, sir.

Q. Never laid any claim to them to you, while you were building there? A. No, sir.

(Testimony of S. J. Weitzman.)

Q. Now, what other lots—you say you claim lots in Block 2? A. Number four and five.

Q. Lot No. 4 is marked “Ida Johnson”; do you own that?

A. No, I sold that lot to Mrs. Ida Johnson; she is the third party that’s owned it.

Q. You sold that lot to her?

A. No; I sold it to another person; they sold to Fay, and he sold to Mrs. Ida Johnson.

Q. Then you don’t own it now?

A. No, sir.

Q. Did you locate those lots? A. No, sir.

Q. How did you acquire them?

A. I bought them from the original locator, Mr. Wilson.

Q. Have you improved them?

A. Yes, sir.

Q. What improvements did you place on them before you sold?

A. I put up a house on No. 4 and I leased this lot out a long time ago and the man I leased to he put up a cabin and it is there yet, and they cleared out the timber and stumps.

Q. How much of an expenditure did you make on those lots? A. About five hundred dollars.

Q. Did Mr. Ripinski ever assert ownership in and to those lots while you were improving them?

A. Not to me.

Q. Did he or anyone on his behalf ever protest against your clearing or building there?

A. No, sir.

(Testimony of S. J. Weitzman.)

Q. Now, you have known Mr. Ripinski how long?

A. Since the winter of 1899, at the time I came the second time to Haines.

Q. Do you know what premises have been occupied by Mr. Ripinski in Haines? A. I do.

Q. Where are they located?

A. Right here it is located, where his store is, and that little ground above the house.

Q. Well, his store—point to where that is on this map?

A. This will be his store, and his icehouse is right up here.

Q. On the easterly, the store is on the southeasterly end of the tract marked “Ripinski Homestead” is it not? A. Yes, sir.

Q. And the icehouse is on the northeasterly portion of the same tract? A. Yes, sir.

Q. And the garden you say is to the west—that’s a garden? A. Behind the house, yes, sir.

Q. Did Mr. Ripinski ever have a fence around that piece? A. Yes, he did.

Q. When?

A. It was in 1898 the time when I first came up to Haines and I stopped in Mr. Ripinski’s house right up here, and his brother was in charge of the store and he thought people might come in and jump it and so he advised him he better fence it what he’s got, and the next day whether he had that wire there or got it I don’t know, but he commenced and wired it up to the corner at that time.

(Testimony of S. J. Weitzman.)

Q. Indicate on this map what was inclosed in the wire fence so the stenographer can get it in the record.

Q. Well, the wire fence was inclosed—you see there was a tent up here in front of the store up to Main Street owned by a man by the name of Brie; about twenty-five feet away at that time from Mr. Ripinski's store, and right above this tent he started in to put up his wire fence up to about that far.

Q. How far—how far from the westerly end of the tract marked "Ripinski Homestead" on that tract?

A. I should say it was at the time about two hundred and fifty feet, something like that.

Q. From the store? A. Yes, sir, westerly.

Q. Westerly, and then it ran northerly, then back easterly and then to Mr. Ripinski's store?

A. Yes, sir.

Q. Did that wire fence inclose any part of this tract that is now platted out into lots and blocks and streets?

A. No, sir; there was one case that was tried in Skagway at court that I was a witness on, and a man broke in this fence around here.

Q. Well, now, Mr. Weitzman, when I ask you a question, just answer it and don't be volunteering any hearsay. Now, you say Mr. Ripinski was afraid people would come in and jump that property?

Objected to on the ground that the witness didn't

(Testimony of S. J. Weitzman.)

state anything of the kind; he said he had that conversation with Mr. Ripinski.

Q. I understood you to say you had a conversation with the brother of the defendant Ripinski?

A. Yes, sir.

Q. And he was occupying those premises at the time? A. Yes, sir, the store.

Q. Now, what was it he stated to you?

Objected to as irrelevant and immaterial and hearsay.

A. Well, we had this talk, and he says he will bring out wire and fence it up.

Q. And why did he say he was going to fence that up?

Objected to as incompetent, irrelevant, hearsay and calling for the conclusion of the witness.

A. It was, I think, barbed wire he was to put around it, and—

Q. That isn't the question; did you and he have any conversation that lead up to the fencing of that parcel there? A. Yes, sir.

Objected to for the same reason as above.

Q. What conversation was that?

Objected to for the same reason.

A. It was to my advice that he went to work and fastened that fence up.

Q. Why did you advise it?

A. Why, the Porcupine was then struck and there would be a rush and people would come in on there and if it wouldn't be fenced it would be occupied by everybody.

(Testimony of S. J. Weitzman.)

Defendant objects to the question, and moves to strike on the ground that it is irrelevant, immaterial, hearsay, and not binding on the defendant.

Q. It was with the defendant's brother you had this conversation you said? A. Yes, sir.

Q. What is his given name, do you know?

A. Gabe, we called him.

Q. Well, was Gabe Ripinski at that time representing the defendant Sol. Ripinski?

A. Yes, sir.

Objected to as incompetent, irrelevant, and hearsay, leading, and in no way binding on the defendant.

Q. Did Gabriel tell you, or show you the boundaries of Solomon's claim at that time?

Objected to as irrelevant and immaterial, and calling for hearsay testimony.

A. He didn't show me particularly the boundaries, but I went out and saw where he fenced it up.

Q. Did you know this Mrs. Sarah Dickinson?

A. Yes, sir.

Q. Did you ever have any conversation with Mrs. Dickinson about what tract of land she owned in Haines? A. Yes, sir.

Objected to unless the time and place and persons present are given, and on the further ground that any conversation with Mrs. Dickinson after her conveyance to Sol. Ripinski wouldn't be binding on him at all.

Q. When and where did you have that conversation? A. In Haines.

Q. When?

(Testimony of S. J. Weitzman.)

A. It was in 1899 once, and then I think I had—well, it must have been the same year, I had several conversations with her.

Q. Did you have any conversation with her with reference to her negotiations or negotiating a sale of her property to Sol. Ripinski?

A. Yes, sir.

Objected to as immaterial and irrelevant, and not binding on the defendant.

Q. What did she say with respect—what was that conversation now, with respect to her negotiating that sale?

Objected to as immaterial, irrelevant and hearsay, and not binding on the defendant.

A. She went out and showed me. I went with her, and she showed me what she sold to Ripinski.

Q. What did she say she had sold to Ripinski?

Objected to as irrelevant and immaterial and hearsay, and being after the conveyance not binding in any manner on the defendant.

A. She showed me particularly the corners where she claimed, and I went with her on that plat of ground there.

By Mr. JENNINGS.—I would like to ask the witness a few preliminary questions: When was this conversation had that you are testifying to now?

A. It was in 1899 some time; I don't know the date.

Q. Where is Mrs. Dickinson, now?

A. She is dead.

Q. How long has she been dead?

(Testimony of S. J. Weitzman.)

A. About a year and a half.

Q. Who was present during that conversation?

A. It was in my own presence.

Q. Anybody else present? A. No, sir.

Q. Where was it? A. In Haines.

Q. Whereabouts?

A. We had that conversation in the store.

Q. Whose store? A. In my store.

By Mr. LYONS.—Well, where did she take you to show you the corners?

A. She went out and showed me the boundaries where she claimed she sold to Ripinski, and it was exactly where that fence stands.

Q. In accordance with the fence you have heretofore described made by Ripinski's brother Gabe?

A. Yes, sir.

Q. What improvements were made, if any, by Mrs. Dickinson or Ripinski on that tract inclosed in that fence, when you first went there?

A. Nothing at all, only that fence was put up in my presence.

Q. What did it inclose, a house, garden, or what?

A. I couldn't see any garden; there was snow on the ground, and there was a house he occupied as his house now, and that tent occupied by Brie.

Q. What was the physical condition of the tract of land in controversy when you went there, as to whether or not it was cleared or covered with timber?

A. It was a wilderness; there was no streets, no alleys; it was a small little trail there leading up

(Testimony of S. J. Weitzman.)

what is now called Main Street, Indian trail, and it was all grown up with brush, trees, roots and stumps and the whole town which is now called Haines was nothing but thickly timber and stumps and so on.

Q. Has it since been cleared?

Objected to as incompetent, irrelevant and immaterial.

A. The biggest portion of it is now cleared.

Q. What can you say as to whether or not it is platted and laid out as a town?

Objected to as immaterial, irrelevant, calling for the conclusion of the witness, and not the best evidence.

A. When I made this purchase, that was in 1899 in the winter of it, this lot here in Block No. 2, I was perusing the plat of the town and I seen the original locators marked on this plat so at that time I have learned they have a plat of it.

Q. I now hand you a map, and ask you if you have ever seen that map or plat before?

A. Yes, this is a copy of it.

Q. Do you know who made that plat?

A. It was made by Elias Ruud from the copy of the original made by Fogelstrom.

Q. Elias Ruud is a U. S. Deputy surveyor and civil engineer, isn't he?

A. Yes, sir; of course on the direct plat made at first you wouldn't find this strip in it; but all the lots and blocks and also the names you would find on it.

(Testimony of S. J. Weitzman.)

Plaintiffs now offer this as a certified copy of the map—

Objected to as immaterial and irrelevant, not properly authenticated—

By Mr. LYONS.—Just a moment, Mr. Jennings, until I make my offer. We will now offer a copy of the plat of the town of Haines, Alaska, compiled from the original town plat and actual survey thereof by Elias Ruud, C. E., certified to by J. J. Rogers, U. S. Commissioner and ex officio Recorder and so forth on August — 1903.

Objected to as immaterial, incompetent and irrelevant, and not being entitled to record, and it not having been shown to have been described or laid out by any one having authority to describe or lay out the property and because it is not acknowledged.

(Admitted.)

Marked Plaintiffs' Exhibit No. 2.

Q. I now call your attention to Plaintiff's Exhibit No. 2 and ask you if you ever saw that plat before? A. Yes, sir, I did.

Q. When?

A. When I bought that lot in Block No. 2—

By Mr. JENNINGS.—We make the general objection to this supposed plat for the reasons just mentioned as an objection to the introduction of the plat itself, and to any testimony in regard to it.

Q. You mean to say you saw this particular plat, or the copy the original copy this one was copied from in 1898?

A. The original of which this one is a copy.

(Testimony of S. J. Weitzman.)

Q. The original made by Fogelstrom?

A. Yes, sir, the original in 1898, when I made the purchase of *this* lots 4 and 5 in Block No. 2.

Q. Are you now in possession of Lot 3 in Block No. 1? A. This here one?

Q. Yes? A. Yes, sir.

Q. And Lots 12 and 13 in Block No. 1?

A. Yes, sir; Mrs. R. L. Weitzmann, my wife.

Q. And Lot No. 5, in Block No. 2?

A. Yes, sir.

Q. And have you been in possession of all of those lots during all of the time since you first took possession of them? A. Yes, sir.

Q. I think you gave the dates in another portion of your testimony, when you located these various lots? A. No.

Q. Well, give them now?

A. I didn't locate; I bought them.

Q. Well, give the dates you bought them?

A. Lot 4 in Block 2, I bought in 1899, and I bought Lots 12 and 13 in Block No. 1 also; that was in 1901, if I'm not mistaken.

Q. In what month?

A. The 30th day of September, 1901.

Q. And Lot 3 in Block No. 1, when did you first acquire possession of that?

A. That I acquired possession of in 1898, in November or December, as I stated, but I bought them in the spring of 1899.

Q. Now, have you been in possession of these different lots since you first acquired possession of them

(Testimony of S. J. Weitzman.)

up until the present time, with the exception of Lot 4 in Block No. 2, which you testify you sold?

A. Yes, and a little piece I sold here in Lot 11.

Q. All the remaining portion of the lots you have been in possession of since you first acquired possession?

A. Yes, sir.

Q. And Mr. Ripinski has never laid any claim to those lots, to you?

A. No, sir.

A. And he has never protested against you improving the same?

A. No, sir.

Q. Can you give an estimate of the approximate cost of clearing this disputed tract, and of erecting all of the buildings that are now situate thereon?

Objected to as immaterial and irrelevant.

A. Yes, approximately.

Q. Now, what, in your judgment, has been the approximate cost of making all of those improvements?

Objected to as immaterial and irrelevant.

A. I believe last winter when I made out the complaint and signed to it, I stated about fifty thousand dollars, and since that, there went up some more improvements, so in my estimate it is fifty thousand dollars—

Q. You needn't mind what you swore to in the complaint—just state as to the improvements now on the ground?

Objected to as immaterial and irrelevant.

A. Approximately over fifty thousand dollars.

Q. What was the approximate cost of the clearing and the buildings erected on this tract in dispute

(Testimony of S. J. Weitzman.)

at the date of the signing of the complaint and commencement of this action?

Objected to as immaterial and irrelevant.

A. About fifty thousand dollars.

Cross-examination.

By Mr. JENNINGS.—What is your name?

A. S. J. Weitzman.

Q. What does the S. stand for? A. Simon.

Q. What does the J. stand for? A. Jacob.

Q. And how do you spell Weitzman?

A. W-e-i-t-z-m-a-n?

Q. How old are you? A. Forty-five.

Q. What is your nationality?

A. I am a Hebrew.

Q. Now, you went down there to Haines the first time in December, 1898?

A. I came down from Skagway in December.

Q. And you stopped as a guest at the house of Sol. Ripinski, with his brother, didn't you?

A. Yes, sir.

Q. Gabriel Ripin? A. Yes, sir.

Q. On this tract of land here marked "Ripinski Homestead"? A. Yes, sir.

Q. He took you in as a guest, didn't he?

A. No, sir; I stopped with him and paid my hotel bill.

Q. Did he keep a hotel?

A. He kept a boarding-house and saloon.

Q. How long did you stay there?

A. A few days.

Q. How many days?

(Testimony of S. J. Weitzman.)

A. Two or three days.

Q. How much did you pay him in hotel bill?

A. I can't remember—whatever he said.

Q. Do you swear you paid him for stopping there?

A. Yes, sir.

Q. You got pretty well acquainted with him there, did you?

A. Not the first time I was there—of course, we were friendly, speaking, and all that.

Q. Not the time you stayed down there two or three days. Now, why did you first go down there, December, 1898?

A. My intention was to—I came up with a stock of goods to go into Atlin and I had my goods at Skagway at the time the alien law was passed in Atlin, and nobody could interpret the law, and some said that Americans would have no right to go in business there, so I opened a store in Skagway and about that time Porcupine was struck and I thought it would be a good place to put in business.

Q. Where—in Porcupine?

A. Well, no; at Haines; that was the place leading into the Porcupine at the time.

Q. And you went to Haines to look around for a place to locate, did you?

A. Yes, sir.

Q. And you talked with Mr. Ripinski at that time about a place where you could locate?

A. I didn't talk to him just then; no.

Q. Well, you looked over the ground?

A. Yes, sir.

Q. And found what ground was vacant?

(Testimony of S. J. Weitzman.)

A. Yes, sir.

Q. And among the places you found vacant was the place you located on, was it? A. Correct.

Q. And that was this Lot No. 3 in Block 1, wasn't it? A. Yes.

Q. And you put up there, located there, in December, 1898? A. Yes.

Q. Did you locate, or buy somebody else out?

A. No, I located.

Q. How did you come to locate on that Dalton acre?

A. I didn't have any knowledge at the time there was any Dalton acre there.

Q. When did you first find out that belonged to Jack Dalton's wife?

A. Dalton came in my place in the spring of 1899, and told me at the time I was on his wife's ground.

Q. What did you do then,—get off?

A. No, sir.

Q. You settled with Mrs. Dalton, didn't you?

A. I didn't want to settle with her; I told her I occupied and located that ground.

Q. I didn't ask you what you wanted or didn't want to do; you settled with Mrs. Dalton, didn't you?

A. Yes, sir.

Q. When? A. In the same spring.

Q. Spring of 1898? A. No, sir; 1899.

Q. When you located on the Dalton acre, nobody objected, did they, Mr. Weitzman? A. No, sir.

Q. Mrs. Dalton wasn't there at the time, was she?

(Testimony of S. J. Weitzman.)

A. No.

Q. And Ripin didn't object, did he, Sol.'s brother, to your locating there? A. No, sir.

Q. But when you found out you were on the Dalton's acre, then you settled with Mrs. Dalton and got a deed from her? Isn't that true?

A. Well, I will explain that to you how it was—

Q. Never mind explaining, Mr. Weitzman; you just answer my question, and explain to your counsel.

A. Yes, I settled with her; otherwise I had to go into a lawsuit about it.

Q. You didn't want a lawsuit with Mrs. Dalton, and so you settled with her?

A. I didn't want a lawsuit with Malony.

Q. Well, he didn't own the Dalton acre—you mean Malony acting for Mrs. Dalton, don't you?

A. Yes, sir.

Q. How did you find out that Mrs. Dalton owned the ground that you were on?

A. I told you Dalton came in my store and told me I was on his wife's premises.

Q. Did he tell you how his wife got those premises? A. No, sir.

Q. Didn't you ask him what claim she had to that ground? A. No.

Q. There wasn't any building on that acre where you located at that time, was there?

A. There was the Spooner hotel.

Q. I say where you located, on that acre tract?

A. I don't know whether it was on one acre or

(Testimony of S. J. Weitzman.)

two acres; there was only one building there, Spooner's hotel.

Q. The ground you located on and put up a building on, there wasn't any building on that ground when you located, was there? A. No, sir.

Q. Didn't it ever occur to you to ask Jack Dalton how his wife could claim property she wasn't in possession of?

Objected to as incompetent, irrelevant and not proper cross-examination.

A. I didn't *had* any chance to ask him.

Q. What do you mean by that—it only takes a half a second to ask that question?

A. I'll tell you why; he came in to my place of business and told me to move off, otherwise he would take a team of horses and pull me off, and talked rough—didn't talk gentlemanly at all.

Q. And because he did that you immediately settled? A. No, sir; I didn't.

Q. Didn't you then take steps to find out whether there was foundation for the claim that Mrs. Dalton had a right to that acre?

A. No, sir; I just ordered him out of my store at the time.

Q. Did you then take any steps to investigate whether Jack Dalton had any claim or right to the land your building, your house was on?

A. At the time I built there was no objection to anything.

Q. After Jack Dalton came in and ordered you off the ground, did you then take any steps to in-

(Testimony of S. J. Weitzman.)

investigate whether Mrs. Dalton had any title to that ground? A. No.

Q. No steps at all? A. No, sir.

Q. You just took his word for it?

A. He came in my store and talked rough; just came in and asked for me, and I came out, and he asked if that is Mr. Weitzman, and I told him my name, and he started in and didn't talk gentlemanly at all, told me to move off or he would take a team and move me off, and I ordered him out of my place.

Q. Then you settled with him pretty soon after that? A. No, sir; I did not, Mr. Jennings.

Q. Well, you settled with Mrs. Dalton?

A. In a month or six weeks Mrs. Dalton came in to my place with Mr. Malony.

Q. Hadn't you taken any steps in the meantime to find out whether she had any claim to that property?

A. I had heard in the meantime there was a lawsuit between Mrs. Dalton and Spooner; and Spooner settled with Malony.

Q. You weren't on Spooner's land, were you?

A. No, sir; I was not.

Q. Because Spooner settled with her is that any reason why you should settle?

A. Yes, it was a reason enough; because Malony told me if I didn't settle he would go to Juneau and bring an action against me and pull me up a half dozen times before the Juneau court and fix it so I couldn't settle anywhere.

(Testimony of S. J. Weitzman.)

Q. And you took his statement that it was Mrs. Dalton's land and took no steps whatever to find out whether it was really her land or not?

A. Nothing whatever.

Q. You settled because Jack Dalton told you he was going to move off your houses with a team if you didn't get off?

A. Yes, sir.

Q. If Sol. Ripinski had told you he would move your houses off that ground if you didn't take them off, I suppose you would have gotten off or settled with him?

A. Exactly, sir; if he told me that, I would just as I did with Mrs. Dalton.

Q. You settled with Jack Dalton, though, didn't you?

A. No, sir; I settled with Mrs. Dalton.

Q. You were afraid of him—that's the reason you got off?

A. No, sir; I told him if he came in my place that way again I would blow his head off.

Q. Did you have a gun to blow his head off with?

A. Yes, sir.

Q. You kept a gun there to blow his head off with, did you?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

Q. Mr. Weitzman, when you went down to Haines in 1897, you leased a piece of land from Sol. Ripinski, didn't you?

A. A piece in 1899.

Q. You leased a piece of land and paid him five dollars a month rent?

A. Yes, sir.

Q. Where was that?

(Testimony of S. J. Weitzman.)

A. The same piece of ground here, yes, sir.

Q. You entered into an agreement with Sol. Ripinski whereby he was to get five dollars a month rent for that part you occupied; isn't that true?

A. I occupied and was in possession of; yes, sir.

Q. How long did you continue to pay him five dollars a month rent for that?

A. One or two months.

Q. Then you knew in December of 1898 that Sol. Ripinski was claiming this land, didn't you—you paid him rent?

A. I said I paid him that in 1899.

Q. Well, you knew it in 1899?

A. No, sir; I think it was after that.

Q. You paid him rent, didn't you?

A. Yes, sir; for one little piece of ground there.

Q. And some of these houses, these lots, you bought as late as 1901, didn't you?

A. Yes, sir.

Q. And you knew Sol. Ripinski claimed this tract of land at that time? A. No, sir.

Q. You never heard of it at all?

A. Yes, in 1899—late in 1899, I think it was.

Q. Then you knew it, that was the first you knew of it?

A. That he laid some claim to it, yes, sir; but, of course, I didn't know what tract it was he claimed.

Q. You knew he claimed the land north of the Mission, didn't you? A. I knew he claimed—

Q. You knew, sir, that Sol. Ripinski claimed the land that had been settled on by these settlers—

Objected to—counsel for plaintiff objects—

(Testimony of S. J. Weitzman.)

Q. Didn't you?

—to counsel interrupting the witness before he completes his answers. I submit that counsel should allow the witness to complete his answers.

Q. Just repeat the question, Mr. Gillette. (Referee reads last question of counsel for defendant.) Didn't you?

A. Yes, I heard there was a lawsuit and he claimed it.

Q. You knew that in 1899? A. Yes, sir.

Q. Didn't you know it before that?

A. No, sir.

Q. Do you mean to swear that you didn't know before 1899 that Sol. Ripinski claimed the land north of the Mission? A. No, sir.

Q. You never heard that? A. No, sir.

Q. When did you say it was you began paying Sol. Ripinski rent? A. In 1899.

Q. You're sure of that, now? A. Yes, sir.

Q. Why should you pay him any rent if you were on the Dalton acre tract and not on his ground at all?

A. Because I didn't know it was the Dalton acre. Rather than to have any lawsuit I went and asked him if I could buy some of his property; that was before I heard that Dalton claimed it, and I heard in 1899 he claimed it, and I asked him and he says he can lease me a piece of property, and I says I wanted to get a piece of property I can occupy, and he says he can't give me no deed or anything but he can lease it to me, and after while he would be in shape to sell it,

(Testimony of S. J. Weitzman.)

and I would have the privilege to buy it. A few months after that Mrs. Dalton comes in and claims it.

Q. I thought you said she claimed it pretty soon after you first occupied it?

A. I built in January, and that was some time along in the spring she claimed it.

Q. And how long was it after you built before Jack Dalton came into your place and told you to get off? A. It was in the spring—

Q. How long after—how long, I asked you?

A. About three months—two or three months.

Q. When was it, then, that you entered into the rental agreement with Sol. Ripinski?

A. That was in February, I should say.

Q. About the same time you entered into the agreement with Jack Dalton, wasn't it?

A. I made the agreement with Ripinski before.

Q. Before Jack Dalton had come in there and claimed that land for his wife?

A. I practically didn't know whether Ripinski claimed it or Dalton. I knew there was a hitch in it some way, and by me not wanting to have a law-suit with either one of them I tried to get from the right party.

Q. You knew, then, that one of the two owned it?

A. One of them claimed the acre, yes, sir.

Q. And you then offered to settle?

A. No, sir; I wanted to find the right party.

Q. And in order to make yourself secure, you

(Testimony of S. J. Weitzman.)

wanted to get both of them, and so you bought from Mrs. Dalton and rented from Ripinski; is that it?

A. First, I thought it was Ripinski's acre, and so I went to work and entered into this agreement with Ripinski towards buying it or leasing it, and after that I learned that Mrs. Dalton claimed the acre and then with the consent of Mr. Ripinski I bought from Mrs. Dalton and paid her the money.

Q. And Ripinski told you afterwards that he didn't own it? A. No.

Q. How long was that after Sol. Ripinski's brother had taken your advice and built that fence you have been talking about a little while ago?

A. I should say four or five months.

Q. Didn't you testify a few moments ago that Mr. Ripinski's brother had built a fence there that didn't come up to your land at all, and didn't you, sir, delineate a—didn't you take a pencil there and indicate and say that fence ran up about two hundred feet from the beach on that tract of land called the Ripinski Homestead? A. Correct.

Q. That didn't include this lot you settled on, did it? A. No, not that fence.

Q. You didn't think that fence indicated all that Sol. Ripinski claimed, did you?

A. I learned afterwards that he made some kind of a purchase from an Indian woman, Mrs. Dickinson, and an acre has been sold to Mrs. Dalton, but at that time—

Q. You learned that he purchased an acre—how was that?

(Testimony of S. J. Weitzman.)

A. Anyway, I heard it had been purchased and Mrs. Dalton and Ripinski claimed it; I couldn't make out at the time where it was or anything about it.

Q. Mr. Weitzman, didn't you in answer to Mr. Lyons a little while ago, say that Sol. Ripinski's brother Gabe built a fence that ran up about two hundred feet on this black tract, in these black lines called "Ripinski's Homestead," as indicating how much land Sol. claimed?

A. Occupied at the time.

Q. How much he claimed?

A. I don't know anything but what he occupied whatever.

Q. And you afterwards found that wasn't correct, that Sol. claimed other land there?

A. I didn't find anything of the kind, sir.

Q. Well, you paid him rent didn't you?

A. I went to work and paid him rent; yes, sir.

Q. Now, Mr. Weitzman, I suppose you and Mrs. Dickinson were great friends, weren't you?

A. No, sir.

Q. She came into your store quite often—you were quite chummy with her?

A. No, sir; she came in like any other of the Indians and bought what she wanted and went away.

Q. Well, she came in your store and you had this conversation you have just testified to on direct examination?

A. Yes, sir.

Q. And that was when, did you say?

A. That was in 1899, if I'm not mistaken.

Q. Who was present besides yourself and her?

(Testimony of S. J. Weitzman.)

A. It was in my store; I don't know whether there was anybody else present; don't recollect.

Q. Well, was anybody else present?

A. I can't say.

Q. What time in 1899 was it?

A. I couldn't designate the day.

Q. Was it summer or winter?

A. I couldn't tell you.

Q. Who started the conversation?

A. I did.

Q. What did you ask her?

A. I heard there was a lawsuit going on, and Mr. Ripinski bought her ground and I wanted to know if she would go out and show me where it was and she said she would and she went out and showed me.

Q. Did she go out on this land with you and show you?

A. Yes, sir, what she sold to Ripinski, and also what she sold to Mrs. Dalton.

Q. Who did you meet on the way down to view this land with Mrs. Dickinson?

A. I couldn't say; it wasn't yesterday; that's pretty near eight or nine years ago.

Q. Who saw you going down there, if anyone did? A. And that I don't know.

Q. When did you first state that to anyone, that Mrs. Dickinson had this conversation with you?

A. In 1899.

Q. I say, when did you first tell that to anyone?

A. I didn't told anybody.

(Testimony of S. J. Weitzman.)

Q. Never have told anybody about that conversation? A. No, sir.

Q. This is the first time you have ever mentioned it? A. That is for my own knowledge.

Q. From that time to this time you never have told a single soul about that conversation with Mrs. Dickinson?

A. I didn't have no opportunity to say anything of this kind.

Q. You have told Mr. Lyons about it, haven't you? A. I don't think it.

Q. Never did?

A. I believe I did speak to him.

Q. When was that?

A. I believe I mentioned it last night.

Q. So you have been occupying this land all this time, and knew Sol Ripinski claimed it and now claims it by deed from this Indian woman Mrs. Dickinson, and you had a conversation with this Indian woman in which she pointed out to you the boundaries of that tract, and you are the ringleader in this townsite contest aren't you? A. Yes, sir.

Q. You're the one going around among these plaintiffs and getting money to fight this suit, aren't you?

Objected to as not cross-examination, incompetent, irrelevant and immaterial.

A. Not particularly.

Q. And yet, sir, during all of that time you never mentioned to anyone about you having this conver-

(Testimony of S. J. Weitzman.)

sation that you have related with Mrs. Dickinson up until last night—is that true, sir?

A. I didn't have no occasion to speak to anyone about it.

Q. That's the only reason you never spoke about it—because you didn't have the opportunity?

A. I knew of course about—

Q. And that's the best answer you can give to that question?

A. I don't know anything else to answer, that's the way it is.

Q. Mr. Weitzman, don't you know, sir, that you never had any such a conversation with this Indian woman Mrs. Dickinson?

A. I swear I did.

Q. This woman is dead now, isn't she?

A. She is.

Q. You remember that lawsuit that Sol Ripinski had with these alleged jumpers some time ago, don't you?

A. Yes, sir.

Q. Weren't you a witness in that suit?

A. No, sir.

Q. Had you had any conversation about this matter with Mrs. Dickinson up to that time?

A. Yes, sir.

Q. And you never told anyone about it then, did you?

A. I was to be called as a witness in the case but I was in Atlin at the time it was tried.

Q. You didn't tell the lawyer for the jumpers about the conversation you had with Mrs. Dickinson at that time?

(Testimony of S. J. Weitzman.)

A. I wasn't interviewed by any lawyers.

Q. When did it first occur to you to mention this conversation you had with Mrs. Dickinson—you say you told it for the first time last night, when did it first occur to you you were going to testify to that effect?

A. It never occurred to me until I was questioned.

Q. Never occurred to you until Mr. Lyons questioned you?

A. I tell you the truth, I thought we were fighting this homestead case and how did I know what was coming up?

A. I'm talking about this conversation with Mrs. Dickinson—you say it never occurred to you up to the time you are testifying to-night that you would be called on to testify about that conversation you had with Mrs. Dickinson?

A. Yes, sir.

Q. And you told Mr. Lyons about it last night?

A. Yes, sir, when he questioned me.

Q. And then you learned at that time you would probably come on the stand and have to testify to that conversation?

A. I do; I testify to the truth, sir, and swear to it.

Q. I haven't said you were not testifying to the truth, and I haven't intimated that you are not—I am simply asking you some questions about it, Mr. Weitzman; don't you know now, Mr. Weitzman, that Mrs. Dickinson had conveyed to Sol. Ripinski all the land between the Mission on the south and Blind Isaac's house on the north?

A. I do not.

(Testimony of S. J. Weitzman.)

Q. You didn't know that? A. No.

Q. You never heard that, did you?

A. I knew he claimed some ground, but I didn't know the boundaries—never seen any plat nor nothing.

Q. If you had known that she had conveyed all the land between the Mission on the south and Blind Isaac's on the north, you wouldn't have tried to take up this land at all, would you?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

A. I would dare to take it after she designated to me the boundaries where she sold it.

Q. Notwithstanding that, if she had given a deed in which she purported to convey to Sol. Ripinski all the land between the Mission on the south and Blind Isaac's house on the north, yet because she told you how this deed was made and showed you that she only owned so much, you would still go ahead and jump this land, would you—take up this land, would you?

A. Well, if I would be allowed to ask a question I can put a little light on it. You can go to work to-day and buy from any of those Indians for ten dollars all the land from Haines clear to Chilkat if you want to.

Q. Never mind, Mr. Weitzman; we don't want any lecture from you on native characteristics—

A. —and he will sell you a whole mountain if you want it.

Q. I didn't ask you for any lecture; now, sir—I

(Testimony of S. J. Weitzman.)

know you didn't buy from an Indian, just answer my question: Would you have still gone ahead and bought this land, knowing of the existence of such a deed?

A. I believe I answered that question before—after she showed me the boundaries; yes, I would.

Q. Notwithstanding the fact she had given a deed to Sol. Ripinski for more than she showed you, you mean to solemnly assert, sir, that you would have gone ahead and bought a lawsuit and got into trouble, you would still go ahead and build your house on this land, knowing of the existence of such a deed from Mrs. Dickinson to Sol. Ripinski? You mean to say that here and now, do you?

A. I mean to say, Mr. Jennings, I know the Indian—

Q. Answer my question; would you?

A. What I answer before I answer you now—from my experience with the Indians—

Q. Answer my question, Mr. Weitzman—answer that question, sir? A. Yes, I would.

Q. Wouldn't that state of facts have lead you into the belief that you might get into trouble?

A. There is no trouble whatever; the Indian will claim he occupies so much and a man can go to him and offer him a little piece of money and he will claim the whole mountain.

Q. Now, sir, you pay attention to what I ask you, and then answer—wouldn't the fact that Mrs. Dickinson conveyed that property to Sol. Ripinski lead you to believe that Sol. Ripinski had some title to it?

(Testimony of S. J. Weitzman.)

A. I don't know anything about that—I don't know.

Q. You don't know whether it would or not?

A. No, sir—what property she sold to him outside—

Q. Well, all the land between the Mission on the south and Blind Isaacs on the north, sixteen acres—if you had known she sold that—

A. Not after I learned the boundaries from her; no, sir.

Q. Wouldn't that show you that Sol. Ripinski claimed the land, no matter what Mrs. Dickinson said about it? A. Yes.

Q. Why should you believe any more what Mrs. Dickinson told you than what she said in her deed?

A. The reason is I would believe Mrs. Dickinson what she showed me and whether I would believe her statement in writing is different because an Indian don't know what is stated in a paper—

Q. Never mind about that, Mr. Weitzman—I would believe what that old woman said as quickly as I would believe you—

By Mr. LYONS.—I object to counsel's manner of cross-examining this witness as unfair and insulting, and I shall instruct the witness not to answer such insinuations unless counsel confines himself to proper examination.

By Mr. JENNINGS.—I will leave it to the record whether I have been fair or not, Mr. Lyons. So that, Mr. Weitzman, at the time you acquired Lots 12 and 13 in Block No. 1 and at the time you acquired

(Testimony of S. J. Weitzman.)

Lots 4 and 5 in Block No. 2, you knew that Sol. Ripinski laid some kind of a claim to that land, didn't you? A. No.

Q. Now, sir, are you honest in that answer?

A. Honest?

Q. Do you swear, sir, that at that time you didn't know Sol. Ripinski claimed that land?

A. No, sir, I did not.

Q. Did you look at the records to find out?

A. I did not.

Q. When you buy land don't you generally investigate the title to find out something about it?

A. I do.

Q. Why didn't you do that in this case?

A. Well, you might say I did as—

Q. Did you investigate the records at all?

A. Yes, I did—

Q. Whereabouts did you investigate any records?

A. I investigated it when I bought it these lots in 1901—when I bought these two lots from the original locators which was on the plat which I saw.

Q. What plat was that?

A. Of the town of Haines.

Q. Was that recorded at the time, 1901?

A. It was recorded if I am not mistaken in 1898.

Q. That's where you got your description, went to Dyea to get that, did you?

A. I didn't go up for it; there was a general understanding in the town at the time this plat was made by Fogelstrom and Mr. Lane collected from

(Testimony of S. J. Weitzman.)

every man in the place and sent it up to Mr. Smith at Dyea to have it recorded; now I mean the place where you see Mr. Cronin's name, the locator of 12 and 13 in Block 1, he had a hotel there and I bought from him—

Q. Simply because you saw his name on that plat? A. Yes.

Q. Now, you swear to that, do you?

A. I do.

Q. And this plat that's been introduced here, Plaintiffs' Exhibit No. 2, is a copy of that plat that you just swore to—is that right? A. Yes, sir.

Q. Will you show me Cronin's name on that plat?

A. His name doesn't appear here because he didn't hire—my name appears there because I paid Mr. Ruud—

Q. Mr. Weitzman, you just swore that this plat is a copy of the Fogelstrom plat, didn't you?

A. Yes, sir.

Q. And you just swore that you bought those lots because you saw Cronin's name on that plat, didn't you? A. Well, that is—

Q. Didn't you swear to that?

A. I believe so; yes, sir.

Q. And that's the only reason you gave for your title? A. Yes, sir.

Q. Because you saw his name on that plat made by Fogelstrom, on whose authority you don't know?

A. I do.

Q. Whose authority was that made under?

(Testimony of S. J. Weitzman.)

A. The people of Haines.

Q. Who—mention some of them?

A. Mr. Fay, W. W. Warne, Mr. Cronin, and Lane, Campbell, Ed. Adams, and a whole lot of others, I can't recollect their names; the community had that town platted.

Q. You simply mean that those few men got together and hired a man by the name of Fogelstrom to draw a plat and put on that plat the lots with the the names of the claimants, and they called that the town of Haines—isn't that the case?

A. I understood that those names—

Q. Well, isn't that true, and isn't that what you mean by the people of Haines?

A. Not exactly.

Q. Well, explain it please, if that isn't what you mean?

A. I understood the community taking up the townsite have the right to go to work and have a surveyor survey it and plat it, and that's what was done.

Q. Mr. John U. Smith at Dyea was the man where everything was recorded those days, wasn't he?

A. Yes, sir.

Q. He was the regular recorder at Dyea?

A. Yes, sir.

Q. If you wanted to buy a piece of property, and didn't know who was the owner, you would go and look at the records and find out who owned the land?

A. I would go to the recorder's, provided I knew

(Testimony of S. J. Weitzman.)

the piece of property has been turned over several times, yes.

Q. All right. Now, how did you know that Mr. Cronin hadn't conveyed those lots to somebody else before you bought?

A. Well, then, he would make liable himself to fraud, I suppose.

Q. You simply took his word that he still owned it then? A. Yes, sir.

Q. And took the fact that his name appeared on the plat? A. Yes, sir; correct.

Q. And you made no further investigation at all?

A. No.

Q. If you had been in doubt of his word, you would have gone to the records at Dyea?

A. Yes, sir; sure.

Q. If you had gone to those records and found out that Sol. Ripinski owned that land, what then?

Objected to as not proper cross-examination, irrelevant and immaterial.

A. Naturally, I wouldn't buy it, that's all.

Q. And you wouldn't have put on those improvements under those circumstances, either?

A. If I had known anyone else had a previous right to me, no, I wouldn't.

Q. Now, you say in December, 1898, you advised Sol. Ripinski's brother that people might come down there and jump his property, didn't you?

A. That was a very common conversation, on account of the strike of Porcupine, whole lot of people poured in.

(Testimony of S. J. Weitzman.)

Q. I didn't ask you whether it was a common conversation or otherwise—you testified that?

A. Yes, sir.

Q. Now, Mr. Weitzman, how much did you say your improvements on those lots have cost you?

A. On which land?

Q. This tract of land in dispute?

A. Only that that's in dispute.

Q. Yes, sir; on the tract of land in dispute.

A. Only seven or eight thousand dollars.

Q. On this survey No. 573, the tract of land in dispute that is? I don't think you mean that—the main part of your house is on the Dalton acre, isn't it?

A. Yes.

Q. How much have the improvements you have put on Survey No. 573, how much does that stand you at this time, excluding the house that's on the Dalton acre?

A. Well, the house on the Dalton acre comes over back, the back end of it; that cost me a thousand dollars, this is the U. S. Jail here.

Q. And in addition to that, your little business there, and that depends a good deal on who wins this law suit, doesn't it Mr. Weitzman?

A. I don't understand you.

Q. I say the prosperity of your business depends a good deal on the result of this law suit, doesn't it?

A. I don't think that has got anything to do with my business.

Q. Don't think it has anything to do with it?

(Testimony of S. J. Weitzman.)

A. I'm sure of it; I know the amount of money I have got expended, I'm pretty sure of that.

Q. And you're sure of your business there?

A. Oh, I don't know that it will injure my business to any extent.

Q. And yet you're the man, the main man that has been around getting up subscriptions and hiring lawyers to fight the claim of the people of Haines against Sol. Ripinski?

A. I beg your pardon; I was one appointed as a committee to go around and see, and there were two men also appointed.

Q. You're the only one left of that committee?

A. No.

Q. Who else is on that committee?

A. Mr. Fay is on that committee, and Mr. Martin.

Q. Well, lately you have taken quite an active interest in the matter, haven't you?

A. Not as much as anybody else.

Q. Not as much as anyone else?

A. Well, an equal share.

Q. Well, then, not any more than anyone else?

A. Equal share; yes, sir.

Q. Did you take up any lots there in July, 1903?

A. Yes, sir, I did.

Q. Whereabouts?

A. Right here, the back part of my lot.

Q. The back part of which lot?

A. The lot where my store is.

(Testimony of S. J. Weitzman.)

Q. Well, the back part of what lot on that exhibit No. 1? A. Lot 3 in Block No. 1.

Q. Was it all of that part of Lot No. 3 in Block No. 1 north of that oblique line that comes through about the center of this, here? A. No.

Q. How much of that?

A. I think about 60 feet; something like that.

Q. It includes these buildings here?

A. Yes, sir.

Q. You took up that property, and then built those three buildings there after July, 1903?

A. This building here was there before.

Q. Who claimed that building at that time?

A. I did.

Q. I asked you if in July, 1903, you took up any other lots?

A. I took up the same lot by locating the boundaries so as to have it on record; I occupied it since 1899 and I went to work and put that location notice on record.

Q. Did you have any conversation with Sol. Ripinski about that time?

A. I never did. He asked me once if I made some locations and he put a man by the name of Peterson to come after me to see I didn't get on his ground.

Q. Didn't you take up any lots there except the back part of Lot No. 3?

A. No, sir, nothing at all.

Q. Didn't you, sir, jump—when was it you took up lots 12 and 13 for Mrs. Weitzman?

(Testimony of S. J. Weitzman.)

A. I bought that in 1901 from Mr. Cronin, the original locator of the ground.

Q. Who put up the buildings on Lot No. 12?

A. I did.

Q. When? A. In 1901.

Q. Did you put them both up?

A. Yes, sir, two buildings.

Q. Who put the improvements on Lot No. 13?

A. This was in the front there—no, it was in the back and the man sold it, he is running a restaurant.

Q. Did you not have a conversation with Sol. Ripinski about July, 1903, in which Mr. Ripinski asked you in the presence of your wife why you jumped his lots there? Back of Weitzman's house, and you answer him that you thought if you didn't jump them somebody else would?

A. That is not true.

Q. You never had any such conversation?

A. No, sir.

Q. You're positive of that, are you?

A. Positive, sir.

Q. Mr. Weitzman, did you not have a conversation *with* Sol. Ripinski on or about July, 1903, in the town of Haines, on the main street there, what is called Main Street in what is called the town of Haines, at which conversation your wife was present, in which Mr. Ripinski asked you why you jumped those lots back of your house, and you answered him that if you hadn't jumped them somebody else would?

A. I positively never had any such conversation.

(Testimony of S. J. Weitzman.)

Q. Nothing like that? A. No, sir.

Q. Did you have any conversation with Mr. Ripinski at all at about that time?

A. Not that I know of.

Q. Well, if you had had such a conversation, you would have known it? A. Yes, sir.

Q. And you swear positively you never did?

A. Positively.

Redirect Examination.

By Mr. LYONS.—Mr. Weitzman, do you know where the original map of which Plaintiffs' Exhibit No. 2 is a copy now is? A. I do.

Q. I mean do you know where the original is now? A. It was left with Mr. Smith in Dyea.

Q. When was the last time you saw it?

A. I never did see the original.

Q. When was it left with Mr. Smith, the recorder at Dyea? A. In 1898.

Q. What became of those records, if you know?

A. I don't know. We only knew that in 1902 a Government agent came from Washington to investigate this matter, and he went to Dyea and he found Mr. Smith's house and he broke into it and found the records and found the town plat of Haines.

Counsel for the defendant moves to strike the answer as hearsay.

Plaintiffs do not resist.

Recross-examination.

By Mr. JENNINGS.—Mr. Weitzman, you say you never saw the original of that plat?

(Testimony of J. G. Morrison.)

A. No, just a copy of the original.

Q. Then you never saw the original of this Exhibit No. 2 of the plaintiff in your life, did you?

A. No, sir.

[**Testimony of J. G. Morrison, for the Plaintiffs (Recalled).**]

J. G. MORRISON, recalled by plaintiffs, testified on

Direct Examination.

By Mr. LYONS.—Mr. Morrison, are you acquainted with one Bill Dickinson?

A. Yes, sir.

Q. He is the son of Sarah Dickinson, formerly of Haines, is he?

A. Well, I knew Bill Dickinson; I don't know whose son he was; he was always known around there as Mrs. Sarah Dickinson's son.

Q. Mrs. Dickinson is the native woman who it is claimed made some sale to the defendant of property in Haines? A. Yes, sir.

Q. How long have you known Billy Dickinson?

A. I got acquainted with him about the time I went there; about 1899 or 1900.

Q. Did you ever have a conversation with Billy Dickinson with reference to how much property his mother owned there at Haines? A. I did.

Q. When and where did you have that conversation?

A. At my own house there in Haines; I don't know whether we was inside *out* outside—I know it was there we talked it over.

(Testimony of J. G. Morrison.)

Q. When was that, Mr. Morrison?

A. That would be 1901 or 1902.

Q. Now, state the subject of that conversation.

Objected to as irrelevant and immaterial, hearsay, not being binding on the defendant and not having been shown to have occurred before the deed from Mrs. Dickinson, his mother, or from either of them, or prior to any conveyance under which Sol. Ripinski claims.

A. Why, I asked Billy one day, "Billy," I says, "how much land did your mother sell to Sol. Ripinski?" And his answer was that she sold the store and the garden, and that was all she ever claimed.

Cross-examination.

By Mr. JENNINGS.—Where did that conversation occur? A. Right at my own place there.

Q. When was it?

A. It would be about 1901 or 1902—it was as early as that, 1902, perhaps.

Q. Who was present?

A. I don't remember; don't think there was anybody heard us.

Q. Nobody heard you at all?

A. I don't really think there was, that I know of.

Q. How did you come to have such a conversation?

A. Why, Billy used to hang around the house a lot and I paid him for his work, and it was after this Ripinski lawsuit and about the time he was sold out there.

(Testimony of J. G. Morrison.)

Q. Mr. Morrison, don't you know that Billy Dickinson was a witness for Sol. Ripinski at that lawsuit? A. I do not.

Q. Don't you know that he swore in that case that his mother claimed all the land between the Mission and Blind Isaac's? A. I do not.

Q. Don't you know as a matter of fact that Billy Dickinson himself made a deed to Sol. Ripinski acknowledged on the 21st day of December, 1897, by which he conveyed to Ripinski both buildings and fifteen acres of land adjoining the Presbyterian Mission grounds situate at Haines Mission, Alaska, except one acre of ground claimed by J. Dalton?

Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.

A. No, sir.

Q. And you're willing to swear now that Billy Dickinson told you in 1901 or 1902, in your store in Haines, with nobody present but yourself and Billy, that his mother never claimed but this small tract where the store and the garden and warehouse is?

A. That's the words he told me—certainly told me that.

By Mr. JENNINGS.—Well, that's all, sir.

[Testimony of H. Fay, for the Plaintiffs (Recalled).]

H. FAY, recalled by the plaintiffs, testified on

Direct Examination.

By Mr. LYONS.—Do you know this man named Billy Dickinson? A. Yes, sir.

(Testimony of H. Fay.)

Q. How long have you known him?

A. Since 1897.

Q. Did you know his mother, Mrs. Sarah Dickinson?
A. Yes, sir.

Q. And how long did you know her?

A. I knew her since 1897 also.

Q. Did you ever have any conversation with Billy Dickinson with respect to the amount of land his mother claimed at Haines?
A. Yes, sir.

Q. When and where did you have that conversation?

A. On the 14th day of December, 1897, at Haines.

Q. What did Billy Dickinson tell you then?

Objected to as irrelevant and immaterial, incompetent, and a repetition, the witness having already testified on the subject.

By Mr. LYONS.—I wasn't sure that Mr. Fay had testified as to that and I merely ask him now to make certain.

A. Billy Dickinson pointed out to me the ground his mother claimed,—this parcel marked "Ripinski Homestead."

Q. On Plaintiffs' Exhibit No. 1?

A. Yes, sir, which included the store building and the warehouse, and it came up approximately to within about, well, I should judge 50 or 100 feet of the east line of the town plat there.

Q. Of Block No. 1?

A. Yes, sir, Block No. 1; there was a little ditch there at that time, and he said it ran just about to

(Testimony of H. Fay.)

there—and that was all his mother claimed at the time.

Cross-examination.

By Mr. JENNINGS.—When was that conversation, Mr. Fay?

A. When we original locators went to locate that ground.

Q. What date—when was it—the date?

A. The 14th day of December, 1897.

Q. Whereabouts did that conversation occur?

A. On the ground there.

Q. Who was present?

A. There was N. Spooner, his name was, Al. James, John Penglase, McLaughlin, Charles Nystrom, W. W. Warne and myself.

Q. That's all, is it?

A. There were others, I believe, but I can't recall their names just at present.

Q. Warne is gone—he isn't around here—he's not missionary down there any more?

A. No, sir.

Q. When was the last time you ever saw him?

A. I haven't seen him since the time he left Haines.

Q. When was that?

A. Oh, I should judge five or six years ago.

Q. Who was Nystrom?

A. He was a fisherman that lived at Pyramid Harbor.

Q. Where is he? A. He is dead, I believe.

Q. Who was McLaughlin?

(Testimony of H. Fay.)

A. He was a man that came up from Juneau.

Q. And where is he? A. I don't know.

Q. When did you see him last?

A. Well, I don't know when I did see him last.

Q. Give us your best estimate?

A. Well, I haven't seen him for many years that I know of.

Q. He is out of the country as far as you know?

A. As far as I know, yes, sir.

Q. Have you seen him around Haines or anywhere else?

A. Don't think I would know him if I did see him even.

Q. And Spooner is out of the country?

A. Yes, sir.

Q. Al. James, what has become of him?

A. I don't know.

Q. He is out of the country?

A. I think he is; yes, sir.

Q. John Penglase is the only man in the country, now, isn't he, out of that big crowd you had there?

A. He is down at Douglas, I believe; yes.

Q. Did he hear Billy Dickinson say this?

A. Yes, sir.

Q. Have you ever talked to him about this matter since that?

A. Yes, we have had several lawsuits in regard to practically this same strip of ground, or part of it; it has been in court at different times, you know, and during that time, why Penglase was a witness

(Testimony of H. Fay.)

on one case that I know of, and whether he was in the others I don't remember.

Q. Did he swear at that trial that he heard this conversation with Billy Dickinson?

A. I don't remember.

Q. Did you? A. Yes, sir; I believe I did.

Q. That's the best answer you can give?

A. No, sir, I know I did.

Q. At which trial was that?

A. Well, it was the trial of—

Q. Whereabouts was that trial held?

A. In Malcolm's Court, at Juneau.

Q. And you swore on that occasion that he, Billy Dickinson pointed out to you what his mother claimed at Haines?

A. I did, simply because I know we took Billy Dickinson with us to show us the ground that was claimed there.

Q. I ask you if that is the fact, that you swore to it? A. Yes, sir, it is.

Q. And you swear to it, now? A. Yes, sir.

Q. Mr. Fay, you knew then at that time, that this Indian woman did claim some land there, and you wanted to find out how much she claimed, was that it? A. Yes, sir.

Q. You know there was a claim of some kind there? A. Yes, sir.

Q. Why didn't you go to the records and find out what it was?

A. Well, I didn't know at the time there was

(Testimony of H. Fay.)

any records of land at Haines—we didn't know of any.

Q. Why didn't you go to Mrs. Dickinson to find out?

A. I don't know whether she was there or not; we naturally thought her son would have knowledge of the ground she claimed—

Q. And you were just going to take her land on what Billy Dickinson claimed, without inquiring from her what she claimed at all? A. No, sir.

Q. Well, you didn't inquire from her what she claimed? A. No, sir.

Redirect Examination.

By Mr. LYONS.—How old was Billy Dickinson at that time?

A. I should judge he was about thirty years old—should judge that much, or more.

Q. He was a native?

A. Yes, sir, half-breed.

Q. More than ordinarily intelligent was he not?

A. Yes, sir.

Q. Does he speak fairly good English and did he at that time? A. Yes, sir.

Q. Which was the more intelligent, he or his mother—which one spoke the better English at that time?

A. He did; his mother couldn't talk very well about it because when we asked her about the ground later on why she could talk,—that is, you could understand her, but she couldn't explain things like he did.

(Testimony of H. Fay.)

Q. Do you know whether there was any regular recording place for Haines at that time?

A. No, sir.

Q. Do you know as a matter of fact whether there was any authority for recording instruments at Dyea at that time?

A. No, I did not.

Q. You didn't know anything about it?

A. No, sir.

Recross-examination.

By Mr. JENNINGS.—Mrs. Dickinson wasn't an ordinary native woman, was she—she was a woman of superior intelligence and education, wasn't she?

A. No, she was not.

Q. Didn't she have a good English education at Victoria?

A. I don't know.

Q. She spoke good English, didn't she?

A. No, sir.

Q. She was a witness on the trial before Judge Malcolm, and also at Skagway, was she not?

A. I think she was.

Q. And she gave her testimony on those occasions without the aid of an interpreter, didn't she?

A. I don't remember as to that.

Q. Now, are you honest in that claim, sir, that you don't know that she spoke good English, and did on these occasions without the intervention of an interpreter?

A. I say I don't remember but she did.

Q. Did you ever talk to her yourself?

A. Yes, sir.

Q. Did she understand everything you said?

(Testimony of H. Fay.)

A. She did.

Q. And she was a well educated Indian woman?

A. I don't think so.

Q. Will you swear that she wasn't better educated than Billy Dickinson himself?

A. Yes, sir, she was a very ignorant woman as far as that's concerned, Mr. Jennings.

Q. Did you ever see her write her name?

A. No, sir.

Q. Didn't you know she could write?

A. No, sir.

Q. You knew she could talk pretty fair English?

A. Yes, sir, I had a conversation with her in regard to that land down there a long time after that and she said—

Q. Well, never mind about that.

Redirect Examination.

By Mr. LYONS.—Billy Dickinson is a half-breed, isn't he? A. Yes, sir.

Q. His father was a white man?

A. Yes, sir.

Q. Did you say you had a conversation with Mrs. Dickinson with reference to the land she owned, that parcel? A. Yes, sir.

Q. When did you have that conversation with her?

A. When I learned that Ripinski claimed he had bought fifteen acres from her.

(Testimony of H. Fay.)

Q. Did she describe to you at that time what land she did claim?

Objected to as not binding on Mr. Ripinski the defendant, irrelevant and immaterial.

A. Yes, sir.

Q. State what parcel of land she described to you?

A. She showed me the ground that she sold to Ripinski; she says, "I sold Ripinski this ground," pointing to the house and the store and warehouse and the little garden, and she says, "That's all I had," and she says when I asked her, that she didn't know what fifteen acres was—those are the words she used to me.

Q. When did you have that conversation with Mrs. Dickinson?

A. Well, it was soon after I learned that Ripinski laid claim to that ground.

Q. Can't you give approximately the date?

A. I couldn't tell to swear to it, within a year.

Recross-examination.

By Mr. JENNINGS.—Now, Mr. Fay, you were on the witness-stand a little while ago to-night, weren't you?

A. I believe I was.

Q. And you were on the witness-stand this afternoon?

A. Yes, sir, and was on this morning too.

Q. And you never testified to the conversation you are now testifying about?

A. I don't believe I was asked the question.

(Testimony of H. Fay.)

Q. And you wasn't asked it to-night—you merely volunteered it to-night, didn't you, that you had this conversation—before Mr. Lyons asked you any questions about it? A. Yes, sir, yes, sir.

Q. All right; now, you heard Mr. Weitzman testify that Mrs. Dickinson had told him?

A. Yes, sir.

Q. And you heard my cross-examination of Mr. Weitzman? A. Yes, sir.

Q. And now you have been recalled, and towards the end of your examination you have volunteered this statement about Mrs. Dickinson having told that—didn't you? A. Yes, sir.

Q. Didn't you ever tell Mr. Lyons before to-night that you had that conversation with Mrs. Dickinson? A. I don't believe I did.

Q. Did you ever tell anybody else?

A. I don't know that I did.

Q. And Mr. Lyons didn't know anything about this conversation you had with Mrs. Dickinson until you just let it out here a few minutes ago?

A. I don't know that I told him.

Q. Don't you know that you didn't?

A. No, I did not.

Q. Who was present at this conversation between Mrs. Dickinson and yourself?

A. Myself and Mrs. Dickinson.

Q. Nobody else at all? A. No, sir.

Q. And Mrs. Dickinson is dead?

A. Yes, sir.

(Testimony of H. Fay.)

Q. And you're interested in this case to the tune of about five or ten thousand dollars?

A. Approximately about five thousand dollars.

Q. Where did this conversation take place?

A. Right at this ground that Mrs. Dickinson claimed; the store was right about here (indicating on Plaintiffs' Exhibit No. 1), just along this line, along the Main Street, when I asked her and she pointed over there and showed me where it was.

Q. How did you come to ask her that question?

A. Well, I asked Billy—we original locators took Billy over to find out where or what ground his mother claimed, and he showed us the ground his mother claimed. Well, after I found out or learned that Ripinski claimed the ground above that, then I asked his mother what she sold to him.

Q. You thought that was quite an important thing to know just what she claimed, didn't you?

A. Yes, sir.

Q. And you wanted to fortify yourself by finding out what she said about it? A. Yes, sir.

Q. Why didn't you testify to that on your other examination in this case, if you thought it was such an important matter in this controversy?

A. I didn't think anything about it.

Q. Why didn't you tell Mr. Lyons about it before this time? A. I didn't think of it.

Q. How old are you, Mr. Fay?

A. About forty years old.

Q. You are a business man, I take it?

A. Yes, sir.

(Testimony of S. J. Weitzman.)

Q. Have had lawsuits of your own I suppose?

A. Yes, sir, several of them.

[**Testimony of S. J. Weitzman, for the Plaintiffs
(Recalled).**]

S. J. WEITZMAN, being recalled by plaintiffs, testified on

Direct Examination.

By Mr. LYONS.—How long, Mr. Weitzman, did you pay rent to Sol. Ripinski for Lot No. 3 in Block 1 at Haines?

A. I believe it was for one or two months.

Q. State the circumstances under which you paid rent to him?

Objected to as repetition.

A. When I put up my building there and started in business, I learned that it has been sold an acre of ground by an Indian woman to Mr. Ripinski and that I am on the ground—on this acre. So I went to Mr. Ripinski and asked him whether he will sell me this and he says no. I says, “Will you lease it to me?” and he says “Yes.” So I made the bargain for five dollars a month and paid him the first five dollars I remember of; whether I paid him the next month I do not remember.

Q. That was when you had already built on the ground, before you learned this acre had been sold?

A. Yes, sir.

Q. And then you went to consult with him about purchasing or renting from him?

A. Yes, sir.

Q. How long did you continue to pay that?

(Testimony of S. J. Weitzman.)

A. I continued to pay that rent until I was called on by Mr. Dalton and afterwards by Mrs. Dalton and told that was their ground, that this acre has been bought by Mrs. Dalton so then with the consent of Mr. Ripinski—Mr. Ripinski then denied his right to this ground I leased from him and turned over the claim to Mrs. Dalton, and then I bought it from Mrs. Dalton and paid her for it.

Q. Did you pay Ripinski any more rent after that?

A. No, he turned me back the rent I have paid in, at least Mrs. Dalton collected from him and I paid the balance of the purchase.

Q. The rent you had already paid was returned by Ripinski after you made the deal with Mrs. Dalton? A. Yes, sir.

Q. Did Ripinski ever try to collect rent from you for any other lot you owned there?

A. No, sir, none whatever.

Q. The other lots you owned weren't located near the vicinity of the Dalton acre?

A. I never located any—I bought.

Cross-examination.

By Mr. JENNINGS.—You wouldn't have paid him any rent if he had asked you?

A. How is that?

Q. I say you wouldn't have paid him any rent if he had asked you to—Ripinski?

A. For which lots?

Q. Outside of this lot on the Dalton acre?

(Testimony of S. J. Weitzman.)

A. Well, if he claimed it I might have paid him, but I bought it from a man that gave me a quitclaim deed for it.

Q. Would you have paid him in 1901 and 1902 if he had asked you?

A. In that year I know he lost it.

Q. I suppose if he had needed it and demanded it you would have paid him?

A. Yes, if he demanded it and gave me title.

Q. Well, you say in 1901 and 1902 you knew he didn't have any right to that land? A. Yes.

Q. If he had demanded rent, you would have paid him even though you know he didn't have any title to it, wouldn't you?

A. I certainly would not.

Q. It wouldn't have done him any good to demand it after you bought from Cronin in 1901?

A. Yes; I didn't believe the land I bought from Cronin was on the Ripinski claim.

Q. Mr. Weitzman, when it was ascertained the land you were on, that acre there, when it was ascertained you were on the Dalton acre Sol. Ripinski paid you back your rent money, didn't he?

A. Yes, sir.

Q. He didn't lay any claim to the Dalton acre?

A. It was between him and Mrs. Dalton; I didn't know anything about that trouble.

Q. Who told you—you say you learned he bought an acre from an Indian woman—who told you that?

A. I heard the rumor that way.

Q. Just rumor? A. That's all.

(Testimony of S. J. Weitzman.)

Q. Can you tell now who told you that?

A. If I'm not mistaken, his brother also told me.

Q. He is away now too, isn't he?

A. He isn't here.

Q. He's down in Seattle—

A. And he also advised me—

Q. Well, who else told you now?

A. About what?

Q. That Sol. had bought an acre from an Indian woman?

A. The rumor was there at the time.

Q. You mentioned his brother in Seattle, now did anybody else tell you?

A. I say I'm not positive; I think his brother also told me about it.

Q. Well, can you give the name of anybody else that told you?

A. I believe—well, I couldn't call names at that time, I have a bad memory on names.

Q. The only person that you can name that you think told you that Sol. Ripinski had bought an acre from an Indian woman is now down in Seattle, like all the rest of your important witnesses—most of them?

A. I don't know where he is, whether he's in Seattle, Portland, or any place else.

Q. I mean all the rest of your witnesses to these conversations—well—that's all.

Whereupon an adjournment was taken until Monday, July 8th, at 9 A. M.

And be it further remembered, that on Monday, July the 8th, 1907, at 9 o'clock A. M., this matter was

(Testimony of W. B. Stout.)

again called for hearing pursuant to adjournment, there being present the same as of Saturday; and thereupon the following proceedings were had, to wit:

[Testimony of W. B. Stout, for the Plaintiffs.]

W. B. STOUT, a witness called to further maintain the issues on behalf of the plaintiffs, being thereto first duly sworn, testified on

Direct Examination.

By Mr. LYONS.—State your name, residence, and occupation.

A. W. B. Stout; residence, Haines; at present I am postmaster down there.

Q. How long have you resided in Haines?

A. Since the spring of 1899.

Q. What official positions have you held during your residence at Haines?

A. I have held the position of postmaster most all of the time; I also held the office of Commissioner for three years.

Q. United States Commissioner?

A. Yes, sir.

Q. For the precinct of Haines?

A. Yes, sir; held office under Judge Brown.

Q. Have you lived in Haines continuously since the spring of 1899? A. I have.

Q. Are you familiar with the village or town of Haines? A. I think I am.

Q. Are you familiar with the tract of ground in controversy in this action? A. I am.

(Testimony of W. B. Stout.)

Q. You have been over that tract at different times? A. I have.

Q. Do you own any property within the disputed tract? A. I do not.

A. I now call your attention to Exhibit No. 1 of the plaintiffs.

A. I don't know, Mr. Lyons, whether I can see so as to tell anything about this map or plat, I doubt it. (Looking through reading-glass.) I can see the exterior boundaries, the lines, but not the names—can't see so as to read them.

Q. Well, by whom has this tract of land been occupied during all the time you have lived in Haines?

Objected to as—objection withdrawn.

A. Well, by Mr. Ripinski and various other persons—not exclusively on this tract of course.

Q. Just confine yourself, Mr. Stout, to my interrogatories—who has occupied the disputed tract?

A. Well, various persons.

Q. Has Mr. Ripinski occupied any portion of it?

A. The disputed tract?

Q. Yes.

A. I think not, except by purchase, and I don't know whether he purchased it or not.

Q. How much of that has he purchased if any?

A. That is the lot where the building stands of Mr. W. H. Bigelow, he made a quitclaim deed to W. A. Barnett.

Q. Which block is that in?

A. In Block No. 1, facing on Main Street.

(Testimony of W. B. Stout.)

Q. You can see it on this plat marked "Sol. Ripinski," can you not, Mr. Stout?

A. I expect it is—I can't see it.

Q. I think you can see that, it is large letters. I believe you stated that no portion of the disputed tract except Lot No. 5 in Block 1 has been occupied by Mr. Ripinski since you went to Haines?

A. Not to my knowledge.

Q. Well, you have been there all the time?

A. Yes, sir, all the time.

Q. And Haines is a small town? A. Yes.

Q. How much, what part of the town of Haines does he actually occupy?

Objected to on the ground that the term "occupy" which Mr. Lyons uses to this witness is of legal significance, and there is no explanation of the witness as to what he means by occupy; it is not only a legal term, but one which in the common vernacular may mean many things.

A. He has resided and occupied—the two terms seem to me to be somewhat synonymous—where he now lives on the eastern portion of the tract designated on this plot—

Q. Designated as "Ripinski Homestead," isn't it?

A. Yes, sir, as appeared the other night on the tract when I examined it.

Q. Is all of the remainder of the disputed tract occupied by different people in the town of Haines?

A. No, I think not.

Q. Then what portion is not?

(Testimony of W. B. Stout.)

A. Well, I think the north half of Block No. 6, and perhaps some of the north half of Block 5—perhaps all of it, I don't know—I don't think there is anyone on that—in fact I don't know just where the line is there, but I don't think there is anyone on the north half of Block 5.

Q. Well, is all of Block No. 1 occupied?

Objected to as leading. Q. withdrawn.

Q. I'll ask you if all of Block No. 1 is actually occupied by residents of the town of Haines?

A. Yes, I think it is.

Q. How about Block No. 2?

A. Well, I think Block No. 2 is too; that is if you mean actually possessed and occupied by the person that claims to own it, I will have to answer no.

Q. Well, how is the land occupied—Judge, you are the witness and I want you to state the facts about it?

A. Well, there is Rev. Mr. Warne, I think, claims Lots 10, 11 and 12 in Block No. 2 and he is in North Dakota somewhere; however, he placed some foundations for a building on those lots and had a good fence around them several years ago.

Q. Well, then, as I understand you, all of Blocks No. 1 and No. 2 are either occupied by the actual owners of the ground or by their lessees or agents?

A. Yes.

Q. How about Block No. 3?

A. Well, that along Main Street is claimed and I think has some improvements on, all of those lots; but the back part of it I don't think is—don't think there

(Testimony of W. B. Stout.)

is much improvement back there, although I think different people claim it all.

Q. You know Mr. Hinchman, do you?

A. Yes, sir, that is in Block No. 3 he is—

Q. Certainly—

A. Oh, well, then, yes—excuse me; Mr. Hinchman, Mr. Colgate, and Mr. H. J. Cougar all have lots there.

Q. Then since reconsidering, what would you say as to all of that block being occupied by different residents of the town of Haines?

A. I think perhaps it is since I recall.

Q. What about Block No. 4?

A. Block No. 4—I don't know whether there is anyone on the back part of that or not.

Q. Do you know the one occupied by Kate Kabler?

A. Is that in No. 4?

Q. Yes, sir.

A. That fronts on Main Street, don't it?

Q. Yes, sir; is that actually occupied by her or her agent?

A. Well, it is occupied by her in a way, she has a little house on it, and it isn't fenced and, I guess, if anyone is her agent I am; she has other property there in Haines not on the disputed tract, also.

Q. Well, have you exerted acts of ownership of that lot for her? A. Yes, sir.

Q. Have you ever rented it for her?

A. I did not; it was never in condition to rent.

Q. She has a small building on her property there?

A. Yes, sir, small building.

(Testimony of W. B. Stout.)

Q. How about the other lots along Main Street in Block No. 4, are you familiar with the Johnson house?

A. The Pete Johnson house, yes, sir; that was originally claimed by a man by the name of Brown when I went there.

Q. Are they actually occupied?

A. I think they are; yes, sir.

Q. Do you know by whom?

A. Mrs. Johnson.

Q. Are they fenced?

A. Not fenced, but it has a good building on, and I understand Pete Johnson's wife has lived there all the time—she is an Indian woman.

Q. Now how about Block No. 4?

A. Lot No. 5 in Block No. 4—

Q. No, you have described that lot—I mean Block 5?

A. In fact, I don't know just where those lines run.

Q. I will call your attention to some of the names designated on those lots on this Plaintiffs' Exhibit No. 1—M. E. Handy?

A. Yes, there is a little barn on that lot out there.

Q. Ed. Fay?

A. Let's see; I don't know what he has on his lot.

Q. John Paddock?

A. Yes, he has a good house on the lot he claims.

Q. That's in Block No. 5, is it? A. Yes, sir.

Q. Falconer & Dryden?

A. They have a fence around that lot.

Q. Mrs. Jesse Craig?

(Testimony of W. B. Stout.)

A. Yes, she has a house and fence around hers. I will state there is no division fence between hers and Dryden & Baldwins.

Q. A. J. Dennerline?

A. Yes, he has a board house on the lot he claims out there.

Q. Then all of that tier of lots in Block No. 5 abutting on Main Street is actually occupied?

A. I think they are.

Q. Were they occupied at the commencement of this suit?

Objected to on the ground it is not shown the witness knows when it was commenced.

Q. This action was begun on July 2d, 1906—were all those lots occupied at that time?

A. Yes, sir, I think they were.

Q. All the lots you have referred to on the disputed tract as being occupied now, were occupied then?

A. I think so.

Q. By citizens of the town of Haines?

A. Yes, sir.

Q. Are you familiar with the different streets in the town of Haines on this disputed tract?

A. Well, yes, somewhat; I know where Main Street is, and Dalton Street on the north, and—

Q. What proportion of the town of Haines is included within this disputed tract?

Objected to as immaterial and irrelevant.

A. The disputed tract lays almost, according to the map as I seen it the other day, I could see better then

(Testimony of W. B. Stout.)

—lays pretty near exclusively in the first row of Blocks, 1, 2, 3, 4, 5, and 6.

Q. Well, now, what percentage of the residential and business portion of the town of Haines is included within the tract—within the exterior boundaries of the tract now claimed by Ripinski in this action?

Objected to as immaterial and irrelevant.

A. The business and residential portion.

Q. Yes.

A. Well, I would say half of the business portion of the town, and the residential portion on the disputed tract—well, almost all of it—the greater portion of it by a great deal—a great deal the greater portion of it.

Q. What was the condition of the town of Haines when you first went there?

Objected to as immaterial and irrelevant.

—I refer now to the physical condition of the land?

A. Well, it had not been cleared; that is, there had been some clearing done but it wasn't what you would call cleared land at all—even what is now called Main Street wasn't cleared at that time.

Q. What is the condition of the disputed tract now, with reference to whether it is cleared or not?

Objected to as immaterial and irrelevant.

A. All of Block 1 is cleared; and all of Block No. 2 might be counted cleared too—think I would say it is cleared. Block No. 3, I think that's pretty well cleared up—in fact I know it is. Block No. 4 isn't so well cleared, neither is Block 5 nor 6.

Q. How about the front tier of lots in Blocks 4 and 5?

(Testimony of W. B. Stout.)

A. The front lots in Blocks 4 and 5 are not entirely cleared up, there has been some work done on them, but I don't think you could say they are entirely cleared. It would take quite a bit of work yet to clean them up and bring them into proper shape.

Q. Are you able to estimate about the amount of money that has been expended by the citizens of Haines claiming adversely to Ripinski this tract—

A. I beg pardon?

Q. I say, are you able to estimate approximately what amount of money has been expended by the citizens of the town of Haines claiming this tract adversely to Sol. Ripinski, in clearing this land and constructing their business houses and residences now on that land?

Objected to as immaterial and irrelevant.

A. Before answering that question, Mr. Lyons, I would like to know whether you include in the question the labor and time—

Q. Yes, sir, the entire expenditure represented by the work done and improvements made and money paid out?

A. Well, I think the estimate placed by the preceding witness, from sixty to seventy-five thousand dollars, is a fair estimate.

Q. You say you don't own any property within the disputed tract of land? A. I do not.

Q. You are not claiming adversely to the defendant? A. I do not.

(Testimony of W. B. Stout.)

Cross-examination.

By Mr. JENNINGS.—Mr. Stout, what has S. J. Weitzman got on Lot No. 5 in Block 2?

A. Well, I can't tell, Mr. Jennings, by that map?

Q. I don't want you to tell from this map; I want it from your own recollection?

A. I don't know that.

Q. You don't know whether he has anything at all on Lot 5 in Block 2?

A. Yes, I know he has—I think he has a half lot there—

Q. I ask you what has he got on the lot?

A. In the way of improvements?

Q. Yes? A. He did have a house on it.

Q. What has he on it now?

A. I don't think he has any house there now.

Q. When did he have a house there?

A. Several years ago he had a little log cabin—perhaps it was lumber; I'm not sure as to that.

Q. You remember that he did have a house on there?

A. Yes, sir, little shack of some description.

Q. Has he moved it off the lot?

A. No, sir, he has torn it down and I think the lumber is laying there on the lot now.

Q. What has Mr. William Holgate on Lot No. 12 in Block 3?

A. I don't know where he does live now, don't know what lot his house is on.

Q. How do you know he claims Lot No. 12 in Block 3 then? A. I don't know it.

(Testimony of W. B. Stout.)

Q. How do you know George Hinchman claims Lot 9 in Block 3?

A. Well, as I say before, I don't know just where those lines are, never paid particular attention to them—I know he lives there is about all.

Q. He does live there, does he?

A. Out there somewhere; yes.

Q. What he occupies and what he claims you don't know? A. No, I don't.

Q. And what Henry Rappolt occupies or claims you don't know either, do you?

A. Well, Henry Rappolt hasn't been here for several years, but his agent Mr. Bjornstad has it now.

Q. That isn't what I mean—

A. Well, what do you mean by occupation then—if you'll allow a question?

Q. Well, you tell me what you mean by it?

A. Well, you wanted to know if he occupied it, do you?

Q. I want to know what part of—or whether—or what you know about Henry Rappolt occupying Lot No. 6 in Block 3, what improvements he has got on it?

A. Well, he had quite a large tent-house there.

Q. Tent-house?

A. Yes, sir, and I think it is there yet—that is, all except the canvas and I'm not sure but what that's there too.

Q. Who lives in it?

A. No one lives in it.

Q. Who was the last person that lived in it?

(Testimony of W. B. Stout.)

A. Well, as near as I can recollect it was Tom Williams, he is an Indian; it was rented to him by Rappolt's agent.

Q. You don't know whether Bjornstad is agent or not, do you? A. Except what he said; no.

Q. Who said? A. Carl Bjornstad.

Q. He said he was agent for Rappolt?

A. Yes, sir.

Q. Where is Rappolt? A. I don't know.

Q. Over in Atlin, isn't he? A. I don't know.

Q. How long have you lived in Haines, Mr. Stout?

A. Ever since March, 1899.

Q. And you never saw Henry Rappolt in your life, did you?

A. I may have seen him, not to know him, I guess.

Q. Haines is a very small place?

A. Yes, comparatively; but there was quite a good many people there and I was a stranger to them all, and they didn't know me.

Q. You are postmaster at Haines?

A. Yes, sir.

Q. And you have been for many years?

A. Yes, sir.

Q. Have you ever delivered any mail to Henry Rappolt or received any addressed to him at Haines?

Objected to as incompetent, irrelevant and immaterial, and the witness should not answer the question as U. S. Postmaster—he is not required to—however, he can use his own judgment in the matter.

A. I don't know.

(Testimony of W. B. Stout.)

Q. You don't know whether you have delivered or have got letters there for Henry Rappolt?

A. Not lately.

Q. Not for many years, have you?

A. Quite a long time ago, if any.

Q. You don't know then that he hasn't been in Haines for six or seven years?

A. I don't know; if he has been in Haines I haven't seen him.

Q. All you know is, Carl Bjornstad says he is his agent? A. Yes.

Q. When was it this man Tim Williams lived on this lot?

A. I think that was winter before last.

Q. What has become of Tom Williams now?

A. He is in the interior somewhere.

Q. How long did he live there?

A. All winter.

Q. Who lives there now? A. Nobody, now.

Q. Is there any house there now at all?

A. The same kind of a house I tell you—kind of a tent-house.

Q. How do you know Carl Bjornstad claims Lot No. 10 in Block No. 2? A. I don't know it.

Q. Who does claim it?

A. I don't know, unless it is Mr. Warne; I think Mr. Warne claims that.

Q. How do you know that Warne claims Lot No. 12 in Block 2?

A. I know he did claim it when he was here.

Q. You're positive about that, are you?

(Testimony of W. B. Stout.)

A. Yes, sir.

Q. Just as positive about that as anything else you have testified to in this case?

A. Yes, sir, just as well as I see you standing there; that's not very good of course, but it might have been then.

Q. You say now that Mr. Warne claims Lot 12 in Block 2?

A. Yes, sir.

Q. And if that's false, everything else you have testified to in this case is false?

Objected to as not proper cross-examination and unfair in the extreme.

Q. Well, what has Carl Bjornstad got on Lot No. 9 in Block 3?

A. I don't know what he has on there.

Q. Don't know whether he has anything, do you?

A. I do not.

Q. As a matter of fact, Mr. Stout, I have been reading those names out wrong to you—names that are not marked on those lots there—what can you say to that?

A. Well, I don't think you ought to do that, Mr. Jennings, simply because I can't see; you hadn't ought to do anything of the kind, if you will allow me to express my opinion about it.

Q. That's right; it might lead you to say something you can't substantiate. As a matter of fact, Mr. Stout, Carl Bjornstad claims Lot 12 in Block 2 and Mr. Warne's name isn't there at all. Now, as a matter of fact, sir, haven't you just been—is not the sum and substance of your knowledge on this subject

(Testimony of W. B. Stout.)

simply this: That there are a lot of people living in that neighborhood somewhere, but where they live, what lot or block they own, or who owns it, you don't know?

A. If that is marked Carl Bjornstad, Mr. Jennings, I think it is marked wrong; I have got that to say.

Q. You think this map is marked wrong?

A. Yes, sir; Carl Bjornstad does claim the east three lots, numbers 7, 8 and 9.

Q. Of what? A. Block No. 2.

Q. The three east lots, 7, 8 and 9?

A. And Mr. Warne did claim Lots 10, 11 and 12 in Block 2.

Q. The three west lots? A. Yes, sir.

Q. Now, Mr. Stout, as a matter of fact, the three east lots of Block No. 2 are numbered 12, 13 and 14 and the three west lots of Block No. 2 are numbered 9, 10 and 11; what have you got to say about that?

A. I have got to say that it isn't marked then, the way I have always understood it.

Q. The map's wrong then?

A. Well, the map's wrong or else I have understood it wrong, one of the two. I am talking, Mr. Jennings, in giving my answers with reference to those lots, according to the plat made by Fogelstrom, and he would commence at the southeast corner of a block and run west, 1, 2, 3, 4, 5, and 6, and then he would go back to the east side and run back on the other side of the block, on the north side of the block,

(Testimony of W. B. Stout.)

number 7, 8, 9, 10, 11 and 12—I think you will find it numbered that way on the Fogelstrom plat.

By Mr. LYONS.—That is the blocks are the same, but on this map the lots are not divided the same?

A. Yes, sir.

By Mr. JENNINGS.—Now, who is Ed. Fay?

A. He is a brother of Harry Fay.

Q. Who is James Fay?

A. He is a brother of Harry Fay.

Q. Then James, Ed. and Harry are three brothers?

A. Said to be; yes.

Q. What has Ed. Fay got on Lot No. 3 Block 5?

A. I don't know what his improvements are; I know there are a quite a lot of little houses out there.

Q. Who is Pete Johnson?

A. All I know about him is, I have seen him a time or two when he happened to be at Haines; he is a white man and has an Indian woman. He at the present time is in the Tanana country, but I'm told—I don't know it personally—I'm told that his wife lives there in that house at the present time.

Q. You don't know anything about it?

A. And he has a son living there too, I believe.

Q. Where does he live?

A. He lives in a little new house built on the same property, I think.

Q. What lot and block?

A. I don't know what lot and block on that map.

Q. Does he live in one house or in three houses—you know that?

(Testimony of W. B. Stout.)

A. Mrs. Johnson lives in a house as I said a while ago originally occupied by a man by the name of Brown; Brown and his family, and I don't know, but I presume she lives there yet; and Charley—he calls himself Charley Edwards, but he is Pete Johnson's son, lives in a little new house that he built there.

Q. But Pete Johnson is himself in the Tanana?

A. Yes, sir; somewhere.

Q. He owns Lot 2 in Block 4, right next to Katie Kabler's, between that and Harry Fay's?

A. I don't know the numbers.

Q. Are there any improvements on that lot?

A. I don't know that either—don't remember.

Q. Katie Kabler lives in Juneau, doesn't she?

A. She lives down there somewhere; either lives in Juneau or Douglas, I believe.

Q. And you are her agent?

A. Yes, I presume I am—

Q. You presume so—what do you mean?

A. Yes, I was her agent, and she has never relieved me of the position, and I presume I am yet.

Q. What is the number of her lot and block?

A. She never gave that to me.

Q. Yet you're her agent?

A. I know where her house out there, but as I said before I never paid any particular attention to the lines of the lots and blocks out in that part of the town, and I don't know just where the lines are of the lots and blocks.

Q. That's what I asked you a while ago; you don't know anything about what lot or block any of these

(Testimony of W. B. Stout.)

people occupy, but simply that some people live up there in the residential portion of Haines, and you don't know what lot or block they claim—isn't that true? A. Well, I do in some of the blocks.

Q. Well, tell me a single one that you know?

A. I have done so.

Q. Who?

A. Carl Bjornstad claims to own the east three lots of Block No. 2 on the north, and that Mr. Warne claims to own the three west lots on the north side of Block 2.

Q. All right; now tell me someone else?

A. Tim Vogel owns or claims Lot 1 in Block 2 according to my understanding of that survey.

Q. All right. What has Mr. *Waren* got in the way of improvements on the east half—on the westerly three lots on the north half of Block No. 2?

A. I don't know what he has now; I know he did have three good foundations there and a fence around his lots.

Q. What do you mean by foundations?

A. Why, foundations for buildings.

Q. Just wooden platforms were they?

A. Yes, sir, on blocks.

Q. Where is Warne now?

A. He is somewhere in North Dakota—I think Norwich.

Q. How long since he has been in Haines?

A. Well, he hasn't been in Haines for 5 or 6 years.

Q. Are you his agent? A. No, sir.

(Testimony of W. B. Stout.)

Q. Anyone else in Haines his agent that you know of?

A. I don't know that he has an agent in Haines at the present time; Mr. Ford was his agent the last I heard. He is now in Portland, or was the last time I heard from him.

Q. Did you know Mr. Warne personally?

A. I did.

Q. He was the Presbyterian missionary there?

A. Yes, sir.

Q. Who is Mary V. McIntosh?

A. She is the daughter of A. R. McIntosh.

Q. He is another missionary there—the present missionary?

A. No, sir, he is not—Rev. McLain is.

Q. He occupied that position until Mr. McLain came?

A. Yes, sir—that is, until Mr. Harrison came there and McLain succeeded Harrison.

[Testimony of H. Fay, Further Cross-examination.]

H. FAY, being called for further cross-examination, testified as follows:

By Mr. JENNINGS.—Mr. Fay, you testified that you knew that the deed from Mrs. Dickinson to Mr. Ripinski had not been delivered up to the 14th day of December, 1897? A. Yes, sir.

Q. Because you were there when Grant Baldwin was called in as a witness to that deed?

A. Yes, sir.

(Testimony of H. Fay.)

Q. Where were you, now, at that time?

A. I was in Chilkat, in Kohler & James' store.

Q. Where was Grant Baldwin at that time?

A. He was in that same store, in Chilkat.

Q. You were fellow-clerks in that same store?

A. Yes, sir.

Q. Where was Mrs. Dickinson?

A. I don't know.

Q. Who called Grant Baldwin to witness that deed?

A. Grant Baldwin told me that Ripinski wanted him.

Q. Never mind what he told you; did you hear anyone ask him to come and witness that deed?

A. No, sir, this is what Grant Baldwin told me.

Q. I'm not asking you what he told you. Now, that was on the 14th day of December you're certain of that?

A. No, not on the 14th day of December, it was after that.

Q. After the 14th—why do you say that?

A. It must have been at least the 15th.

Q. Well, what day was it?

A. I couldn't say as to that—it wasn't the 14th.

Q. Then, it must have been at least as early as the 15th?

A. Well, I don't think so; I think it was later still than that.

Q. Well, must it not have been at least the 16th of December?

(Testimony of H. Fay.)

A. I don't remember; I know it wasn't on the 14th—it was after that.

Q. Well, you know it wasn't on the 14th, and it wasn't on the 15th, didn't you say that?

A. I did.

Q. And you don't know whether it was on the 16th or not?

A. Why no, I do not; I think it was quite a while after the 14th of December, 1897—quite a little time after that.

Q. Quite a while—now, you must have something in your mind that you mean by quite a while—was it four days, five days, a week, or a month?

A. I couldn't say; it was quite a while ago you must remember, but I know it was after the 14th some time.

Q. You're positive then it was after the 14th of December?

A. I am positive, sir, it was after the 14th day of December of the year 1897.

Q. It might have been on the 15th?

A. It was after that, I believe.

Q. But how long after the 15th you're not able to say?

A. No, sir, I can't now remember.

Q. And you won't hazard the assertion whether it was a day, a week, a month, or a year after the 15th?

A. Well, it was after that I know—I couldn't say as to the time.

Q. I don't ask you, Mr. Fay, to be precise about the time; I want to get some idea of the time—you know very well it wasn't a year afterwards?

(Testimony of H. Fay.)

A. I don't know now when it was; that has been a long time ago and I can't say positively as to the time; I remember incidents on that day because I met all those parties I spoke of, Billy Dickinson, Grant Baldwin and Ed Owens, and they were all playing cards when I came in the store on the 14th of December—Al James, he was there, too.

Q. For Heaven's sake don't talk any more about the 14th day of December—how much after the 15th day of December it was you're not able to state, now, are you?

A. No, I can't recall now how much after it was.

Q. But it was after the 15th—you're sure of that?

A. Yes, sir.

Q. And you say that you and Grant Baldwin were co-employees there in the same store?

A. Yes, sir.

Q. And Grant Baldwin left the store to witness this deed?

A. No; Grant Baldwin told me that Ripinski called him to witness the deed I said.

Q. Well, what I want to know—were you there when Grant Baldwin went out to witness that deed?

A. I don't remember that.

Q. Did he come back and say he had witnessed a deed of Mrs. Dickinson to Ripinski?

A. I can't recall—simply remember there was some conversation about it.

Q. You just remember the conversation, and the date you don't remember?

A. Yes, sir.

(Testimony of H. Fay.)

Recalled on

Redirect Examination.

By Mr. LYONS.—Mr. Fay, can you point out on Plaintiffs' Exhibit No. 1 who were the occupants of the different lots indicated on that exhibit at the time of the commencement of this action—that is, on the 2d day of July, 1906?

A. Yes, I can name quite a number of them.

Q. I wish you would indicate or state so the Referee can get it into the record, who occupied the different lots on that tract at the beginning of this action, in Block No. 1?

A. Well, this is Lot 1 in Block 1; this is Morrison & Kiernan marked J. G. Morrison—shall I allude to these as lots?

Q. Parcels, they are called in the complaint?

A. Parcel 2 in Block 1, Nettles & Ford, they have occupied that as a hardware store; the building is now used by Vogel & Brascon—I think that was the hardware store; Morrison is running a hotel in this building on Parcel 1 in Block 1; S. J. Weitzman occupies Parcel 3 in Block 1 with a general merchandise business, also the U. S. Jail is on that parcel—you don't care for all of the buildings?

Q. No, not particularly what they are.

A. H. Fay occupies Parcel 4 in Block 1, a general merchandise establishment at that place.

Q. Is there a residence there also?

A. Yes, sir, residence and barn, well, and warehouse; Sol. Ripinski claims Parcel 5 in Block 1, there is a building on that occupied by the Peniel Mission. Parcel 6 in Block 1 is occupied by J. W. Martin, he

(Testimony of H. Fay.)

carries a line of general merchandise. Parcel 7 in Block 1 is occupied by B. A. Mahan, with a barber-shop, bath-house and residence; M. V. McIntosh occupies Parcel 8 in Block 1, on which there is a residence occupied by J. W. Martin as a warehouse. On Parcel 9 in Block 1 J. W. Martin has erected a new residence on that. Parcel 10 in Block 1 is used as a wood-yard by Ed. Fay, he is a teamster doing jobbing around there and he has a wood-pile and uses it as a wood-yard; it is marked James Fay, but he isn't in the teaming business and he lets Ed. use it as a wood-yard, it belongs to my brother.

Q. Who owns the lot?

A. James Fay. Parcel No. 11 in Block 1 is owned by Butterick Brothers; it is occupied by them as a restaurant and it was built by them. Well, this little building in the back here doesn't amount to much; and there is a residence and chicken-house on the same parcel.

Parcel 12 in Block 1, there is a residence on that built by Mr. Weitzman; this is marked R. L. Weitzman, belongs to Mrs. Weitzman, I believe. Parcel No. 13 in Block 1, there is nothing on that more than it is fenced that incloses both of the lots, and he has about twenty-five cords of wood stacked up there where he keeps his winter wood—hasn't room on his other lots and has about 25 cords of wood stacked on Parcel 13 in Block No. 1. Parcel 14 in Block 1, there is a house there erected by E. A. Adams in which he lives and runs a laundry. Parcel No. 15 in Block 1 is occupied by Fred Handy as a residence, by his house

(Testimony of H. Fay.)

and also a barn. Parcel No. 16 of Block 1 is occupied by J. G. Morrison with his residence, and Parcel No. 17 in Block 1 is claimed by C. C. De Haven and Tim Creedon—there is a residence on there occupied by De Haven.

Q. Now, were all these parcels of land you have just described occupied by the different people you have just named at the time of the commencement of this action?

A. Yes, sir; there has been some improvements since that, J. W. Martin has erected a house on his lot which he has used to keep stuff in, &c., you know, and since that time he has put a nice residence on it.

Q. Now, proceed in the same manner with Block No. 2?

A. Parcel No. 1 in Block 2 is owned by Tim Vogel, on which he has a saloon and a large building adjoining the saloon, and two other dwelling-houses and his house. Parcel No. 2 in Block 2 is owned by T. D. Valeur on which is a building called the "Hotel DeFrance." Parcel No. 3 in Block 2 is owned by James Fay; on it there is a dwelling-house. Parcel No. 4 in Block 2, there is a house there owned by Ida Johnson occupied by—let's see, the woman living in there they call Carrie—I don't know her other name; Mr. Stout may be able to tell you as he is agent for that property. S. J. Weitzman claims Parcel No. 5 in Block 2—

Q. Is there any improvements on that lot?

A. Yes, there is a foundation about five feet high on that, the remnants of a store. There was a store in

(Testimony of H. Fay.)

the same building in early days, and the top of it was a tent, and the top—let me see,—well, I don't know whether that's there yet or not; it isn't indicated here and I was just looking at Handy's place there and his residence and the other—but I think it is there now. There is a foundation about five feet high unless Mr. Weitzman has had it removed lately. To the best of my recollection it is still there, although it isn't indicated. Parcel No. 6 in Block 2 is occupied by M. E. Handy, on which he has a barn and residence. Parcel No. 7 in Block 2 is claimed by W. W. Warne, on which he has a residence occupied by Perkins. Parcel No. 8 in Block 2 is owned by W. W. Warne—

By Mr. JENNINGS.—You weren't asked who owned these buildings but who occupies them, and you are going on to say who owns them. If this witness is going on to say now who owns those parcels, I'm going to ask him first how he knows—I object to his stating who owns them.

By Mr. LYONS.—I don't suppose you object to his testifying who claims them, do you, Bob?

By Mr. JENNINGS.—I do unless he knows of his own accord.

By the WITNESS.—Well, Parcel No. 8 in Block No. 2 is claimed by W. W. Warne, and on it—

Defendant objects to this witness testifying as to who claims any particular lot except his own lot, for the reason that any testimony as to who claims them must necessarily be hearsay, the only person who can testify to a claim being the person making such claim.

(Testimony of H. Fay.)

By Mr. LYONS.—Very well, we will waive that. Go ahead, Mr. Fay, and state who occupies those different parcels.

A. Well, there is a residence on Parcel 8 in Block 2 occupied by Ed. Donnelley—

Q. Now, Lots 7 and 8 in Block 2 you stated were claimed by W. W. Warne—do you know of any acts of ownership or possession which have been exerted over these parcels by Warne? A. Yes, sir.

Q. State what he did towards appropriating them? A. He built the houses on there.

Q. About when, approximately?

A. Well, I think it was about 1899.

Q. Now, proceed as to the occupants of the remaining parcels in Block 2?

A. Parcels 9, 10 and 11 in Block 2, there is a fence around all of that and three foundations—that is, one foundation represents each lot.

Q. Foundations constructed by whom?

A. Constructed by W. W. Warne in 1899, that is, he had it done for him, I suppose.

Q. And a fence around the tract including those 3 lots? A. Yes, sir.

Q. Is that fence still there?

A. Well, the original fence was partly taken down and removed and there is another fence in its place; that is, part of it was taken down and carried away for firewood. That is, along here you understand.

Q. When you say “along here,” please indicate, Mr. Fay, so the stenographer can get it.

(Testimony of H. Fay.)

A. On the northwesterly end of Parcel No. 9 the fence has been removed, and there has been a new fence erected thereon. Parcels 12, 13 and 14 are all enclosed with a fence, two houses thereon—I don't know the part they live in—this house here there is a soldier's wife lives, there is a bath-house and dwelling-house on 12, 13 and 14 in Block 2; this part here is all garden, fenced in, and potatoes and other stuff planted there.

Q. Where, where Mr. Fay, indicate it?

A. On 12, 13 and a part of 14, this is all garden, and it is all fenced and there are two residences on that; that space there they have garden truck there, vegetables, &c., and there are two houses on there Bjornstad put up to rent and this one here is occupied at present, or was a month or so ago but I don't know whether there is anybody in that house or not—

Q. What house?

A. In the north house there on Parcel 14 in Block 2. The other is occupied as a dwelling and bath-house.

Q. Now, were all of these parcels of land you have just described in Block No. 2 occupied by the various people you have just described, and claimed by the various people you have just described, at the time of the commencement of this action?

Defendant objects to any testimony as to who the claimants of the lots were for the reason that it is pure hearsay and is bound to be hearsay—that isn't the way to prove who claims lots.

(Testimony of H. Fay.)

A. The people who occupy or claim these lots in all cases do not own them—some of them of course rent—

Q. Mr. Fay, will you please listen to my question, and we will get along very well. Were they occupied by these people at the date of the commencement of this action? A. They were.

Q. The people you have just described—by the people you have just described?

By Mr. JENNINGS.—He described both the occupants and the claimants, Mr. Lyons and I object.

Q. I am referring to the occupants now. Were they occupied by the people you have described as occupants at the time of the commencement of this action? A. Yes, sir.

Q. Were those different lots in the possession of those people at the date of the commencement of this action? A. Yes, sir.

Q. Had the improvements you have described as having been made by the different people claiming these lots, been made thereon prior to the commencement of this action? A. Yes, sir.

Q. Proceed now, with reference to Block No. 3?

A. Parcel No. 1 in Block 3 is occupied—you just want who they are occupied by?

Q. The occupants, yes, sir?

A. This is occupied by some natives.

Q. Who, if anyone, ever improved that lot?

A. Mary V. MacIntosh improved it and built on it—had a house erected on it.

Q. When?

(Testimony of H. Fay.)

A. I think it was in 1899, it was used as a—they run a paper in there called the “Porcupine Quill”; it was published in that building.

Q. Do you know whether or not she leased it to those Indians? A. Yes, she did.

Q. Had she leased it to anyone at the time of the commencement of this action, do you know?

A. Well, of course, it has been leased at different times, and people down there generally stay a while and move away. It was leased prior to that time to different parties you know.

Q. Has she exercised, since the construction of that building, the right of possession in and to that lot? A. She has.

Q. All right; go ahead now.

A. Parcel No. 2 in Block 3, on which is a house occupied by natives—

Q. By whom was that lot improved, if anyone?

A. These two houses really belonged—there is a house on Parcel No. 3 here in Block 3 that belongs to this party.

Q. To the party on Parcel No. 2 you mean?

A. Yes, sir, Parcel 2 in Block 3, but the line cuts it off this way, you see. Sometimes when they would measure their lots they wouldn't get them right, you see; there are really two houses on Parcel 2 in Block 3, and only one of them is indicated on that map.

Q. Who erected those houses?

A. One house was erected by a party by the name of Jimmy Pozzo.

(Testimony of H. Fay.)

Q. When was that house built?

A. I think in 1898.

Q. Who occupies that parcel now?

A. Some natives occupy it now, are renting it.

Q. From whom?

A. Well, I'm not certain as to that; the party that owns it is the father in law, is a native and I presume—well, I don't know who they rent it from, that's the sum and substance of it; I was agent for them for a while.

Q. For whom?

A. I was agent for the party that owns it now.

Q. Well, who is that, Mr. Fay?

A. Well, I don't really know whether Bryson is owner of it; it is marked "William Bryson." He did own it; he has been gone some time and his father in law comes in there and lives; the go back and forth between Klukwan and Haines, and when he comes down he stops in it sometimes there, and sometimes his son.

Q. Now, proceed with the next parcel—Parcel No. 3 in Block No. 3?

A. Parcel No. 3 in Block 3, there is nobody occupying those premises at present.

Q. Was it ever improved by anyone?

A. Yes; and it was occupied by some natives—

Q. By whom was it improved?

A. It was improved by V. Reeder.

Q. When?

A. If I remember rightly in 1898 or 1899.

Q. You say some natives occupy it now?

(Testimony of H. Fay.)

A. Yes, sir.

Q. Did they occupy it at the commencement of this action—no, strike that out. Do you know whether or not these natives claim it themselves?

A. No, they rent it.

Q. From whom? A. From me.

Q. You own the lot then?

A. No, sir, I'm agent for it.

Q. For whom are you agent?

A. For V. Reeder.

Q. And you were agent for him at the time of the commencement of this action, were you?

A. Yes, sir, for that lot.

Q. All right. Now, proceed—just a moment, you held possession of that lot for V. Reeder at the time of the commencement of this action, did you?

A. Yes, sir.

Q. Very well. Now, proceed?

A. E. J. Burger occupies Parcel 4—that is, he doesn't exactly occupy it; Parcel 4 in Block 3 there is a house on that, and I don't believe anyone occupies that at present.

Q. Who built that house?

A. E. J. Burger.

Q. When? A. In 1898 or 1899, I think.

Q. Where is Mr. Burger now?

A. I don't know.

Q. Has anyone been living in that house recently? A. Yes, sir.

Q. Who? A. Mr. McElravy.

(Testimony of H. Fay.)

Q. Do you know whether he leases it or claims it? A. He rents it, yes, sir.

Q. From whom?

A. W. B. Stout, agent for Mr. Burger.

Q. Now, proceed with the next one?

A. Parcel No. 5 in Block 3 is occupied by Tom Lahey.

Q. How long has it been occupied by him?

A. Oh, I think nearly two years.

Q. Does he claim it as his or lease it?

A. He rents it from the Bjornstad's.

Q. All right; proceed with the next?

A. Parcel 6 in Block 3, there is nobody that occupies that; there is the remnants of a bakery that was there.

Q. Who built the bakery there originally?

A. If I remember right, it was Andrew Dreer—I don't know as to a certainty about that.

Q. You say the remnants of a bakery—what destroyed the bakery—why do you describe it as the "remnants"?

A. Why, there was just a board floor, and the sides and rafters of lumber and a tent over the top, that was what comprised the bakery.

Q. Is that lot fenced? A. Yes, sir.

Q. Do you know of anyone exercising any acts of possession over it? A. Yes, sir.

Q. Who? A. Carl Bjornstad.

Q. Do you know whether he exercised such acts of ownership or rights at the time of the commencement of this action? A. Yes, sir, he did.

(Testimony of H. Fay.)

Q. Is he a resident of Haines? A. Yes, sir.

Q. And a party to this suit? A. Yes, sir.

Q. All right. Now, proceed.

A. Parcel No. 7 in Block 3 is occupied by George Hinchman. Let's see; parcels 7 and 8 are all fenced and George Hinchman has a residence thereon in which he lives and he uses the balance of it for a garden.

Q. Mr. Hinchman is one of the witnesses who has already testified in this case? A. Yes, sir.

Q. Was he in possession of that land at the time of the commencement of this action?

A. Yes, sir.

Q. And for how long prior thereto?

A. For many years.

Q. And he is in possession of it at the present time?

A. Yes, sir. And then Parcel No. 9, that has been transferred in the last few months, I believe it is owned—

Q. Who occupies it?

A. Well, a party—there is no house on there now, but there is a man over at the Post there and after his work he goes over and does work on it, getting it in shape to build.

Q. Who improved it originally, if there are any improvements on it?

A. Let's see, I don't know; there is no building on it.

Q. Is it fenced? A. Yes, sir.

Q. Who built the fence around it?

(Testimony of H. Fay.)

A. I don't know.

Q. Well, proceed with the next?

A. Parcel No. 10 in Block 3 has been occupied by H. Cougar, until just this last few days.

Q. Was it occupied by Mr. Cougar at the date of the commencement of this action?

A. Yes, sir, I understand so.

Q. He was in possession of it at that time?

A. Yes, sir.

Q. And you say he vacated it in the last few days? A. Yes, sir.

Q. Who occupies it now?

A. I think he occupies it now, but I think he has sold it and hasn't moved out yet. Then Parcels 11 and 12 are occupied by William Holgate; he has a residence and a garden on there.

Q. Was he in possession of those lots at the date of the commencement of this action?

A. Let's see—yes, sir.

Q. Proceed now in the same manner with Block No. 4?

A. Parcel No. 1 in Block 4 isn't occupied at present, the house isn't.

Q. Who built that building, if you know?

A. Kate Kabler.

Q. When?

A. Well, let's see; I think that was in 1902—1901 or 1902.

Q. And the building stands there yet?

A. Yes, sir.

(Testimony of H. Fay.)

Q. Do you know whether it has ever been occupied since that house was built or not?

A. I don't, no.

Q. Well, proceed?

A. Parcel 2 in Block 4—let me see, Parcel 2—

Q. Well, if you don't remember—

A. I do remember, but it seems to me they are misplaced here in some way; I'll tell you how that is. Now, let's see here—Oh, yes, I believe I know how that is now—that's not occupied either.

Q. Do you remember whether there is any building or structure on it? A. Yes, sir.

Q. By whom was that built?

Objected to as immaterial and irrelevant.

A. You see the measurements on the map aren't just the same as they are on the ground, for the simple reason that these lots were laid off with a tape-line. For instance, this lot where it shows on the map if you go and see it there it is practically on the corner; that we would consider the line there may not be just right, didn't get our measurements accurate you see like a surveyor would and it mixes a body up in defining just the location. Let's see; this Parcel 2, in Block 4, there is nobody occupying that house at present.

Q. Do you know by whom that building there was erected?

Objected to as irrelevant and immaterial.

A. Yes, I do, but I can't just recall his name.

Q. Proceed with the next lot then?

(Testimony of H. Fay.)

A. Parcel 3 in Block 4 isn't occupied at present.

Q. That's marked H. Fay, isn't it?

A. Yes.

Q. Are you the owner of that lot now?

A. No, sir.

Q. Who is? A. V. Reeder.

Q. Who built the house on it?

A. Why, there was two Italian boys, Jimmy Pozzi, and the other one I don't remember his name at this time.

Q. It isn't occupied now? A. No.

Q. When was that house built?

A. I think it was in 1898.

Q. When was the last act of ownership Mr. Reeder exercised over it?

A. Well, I am his agent.

Q. And you have the possession of the lot now for him? A. Yes, sir.

Q. You had the possession of that lot at the date of the commencement of this action, did you?

A. Yes, sir.

Q. Very well; proceed.

A. Parcels 4, 5 and 6 in Block 4 are occupied by Peter Johnson's son; Pete Johnson of course—well, I don't suppose that makes any difference—they are all occupied and he owns them, and Pete Johnson's son lives in here and these are occupied by natives; I can't call their names, of course.

Q. Which one does Pete Johnson's son live in—on which lot?

(Testimony of H. Fay.)

A. He lives on Parcel 4, and there are natives living on the other two, 5 and 6.

Q. Well, they occupied those premises at the date of the commencement of this action, did they?

A. Well, that I don't know.

Q. Who built those houses?

A. Well, Pete Johnson's son built that house there—he removed an old house that had been there previous to that time.

Q. When did he build the new house?

A. I think in 1906.

Q. Was he in possession and occupying that lot at the date of the commencement of this action?

A. Yes, sir.

Q. Do the natives that live on the other two lots, do you know whether they claim to own it themselves or whether they lease it from Johnson?

A. I don't know whether they lease from Johnson—Weitzman is the agent for Johnson, I think.

Q. Proceed—just a moment, do you know where Pete Johnson is at this time?

A. No, I do not.

Q. Very well, go ahead?

A. Parcels 7, 8, 9, 10, 11 and 12 in Block 4, the improvements on there were all destroyed by the forest fire in 1903.

Q. Then there are no improvements there now?

A. No.

Q. Is that tract of land included in the north-erly tier of lots in Block No. 4 under fence?

A. No, sir—well, partly, I will say.

(Testimony of H. Fay.)

Q. Do you know whether anyone occupies them now or not? A. Well, Mr. Hinchman—

Objected to as immaterial and irrelevant to any of the issues made by the pleadings; those lots are not claimed by any plaintiff and are not mentioned in the bill of particulars at all—not mentioned in the bill of complaint as having been claimed by anyone at all.

A. The northeast end—let's see, the east end of the north half of Block No. 4 is partially occupied by George Hinchman with a garden there.

Q. Proceed with the next—yes, I'll ask you, was Mr. Hinchman occupying those parcels of land as a garden at the time of the commencement of this action? A. Yes, sir.

Q. And in possession of the same?

A. I don't know really whether he owns them, or who does—I know he had his garden there.

Q. Well, proceed now, with Block No. 5?

A. Lot 1 in Block 5, now this lot is claimed by Dannerline and occupied by his two houses as illustrated on this map but he has only one house, I believe, on the ground he claims because our lines are not the same as the survey.

Q. Where is the other house?

A. The house he owns is mostly on the street—this is Dennerline's house here, when he was putting it up of course he thought he was getting it right—

By Mr. JENNINGS.—How do you know that?

(Testimony of H. Fay.)

A. Because naturally he wouldn't put it in the street.

Q. Well, you just testify to what you know Mr. Fay.

By Mr. LYONS.—He has a house on those lots?

A. Yes, sir.

Q. Who occupies that?

A. He has that as a blacksmith shop, and has things stored in there, nobody occupies it.

Q. Was that building there prior to the commencement of this action? A. Yes, sir.

Q. And it was and is in the possession of Mr. Dannerline? A. Yes, sir.

Q. Proceed?

A. On Parcel 2 Block 5, this house is claimed by Mr. Handy—

Defendant objects to any testimony as to the house being occupied by anybody.

—I state that because it is indicated on Lot 1 in Block 5 and it doesn't belong to the party that owns parcel 1 in Block 5.

Defendant objects to any testimony whatever by this witness as to the party that any particular lot belongs to.

Q. Mr. Handy occupies that house?

A. No, he doesn't occupy it at present.

Q. Are there any improvements on Parcel 4?

A. Yes, sir.

Q. What are the improvements there?

A. There is a nice large dwelling-house there.

(Testimony of H. Fay.)

Q. I meant on Parcel 2 in Block 5 marked "M. E. Handy"?

A. There isn't as indicated on this map, but there is a house on his lot; the lines don't run, as I say, right; but this house belongs to Handy as indicated on Lot 1 in Block 5.

Q. Mr. Handy built it, did he?

A. No, sir, Mr. Handy put it there, but moved it from another part of town.

Q. When?

A. Oh, I should judge three or four years ago.

Q. Has he occupied it since then?

A. Yes, sir.

Q. All of the time since then?

A. No, not all of the time.

Q. I mean has he been in possession of it with that building all the time?

A. Yes, he has moved now, though; he is logging—isn't at Haines at all now.

Q. Proceed with the other lots now?

A. Parcel No. 3 in Block 5, there is no residence thereon.

Q. Is there a fence?

A. Yes, sir.

Q. When was it enclosed by a fence?

A. I think about three years ago.

Q. By whom? A. By Ed. Fay.

Q. Is he in possession of it now?

A. Yes, sir.

Q. Was he in possession of it at the date of the commencement of this action? A. Yes, sir.

(Testimony of H. Fay.)

Q. Now, the next lot?

A. Parcel No. 4 in Block 5 there is a residence thereon, occupied by a native who is renting it.

Q. Who built the residence thereon?

A. John Paddock.

Q. When was that—before the commencement of this action?

A. Yes, sir, about three or four years ago.

Q. Was Mr. Paddock in possession of that lot at the beginning of this action? A. Yes, sir.

Q. And he is still in possession?

A. Yes, sir.

Q. You say a native occupies it—does he rent to the native? A. Yes, sir.

Q. Very well; proceed.

A. Parcel No. 5 in Block 5, there is no house on that.

Q. Is it also enclosed with a fence? Any improvements on the lot at all?

A. It is enclosed by a fence; yes.

Q. By whom was it so enclosed?

A. I don't know.

Q. Do you know who is in possession of it now?

A. No, I do not.

Q. All right; proceed with the next parcel?

A. Parcel No. 6 in Block 5, there is a house on there and Mrs. Craig lives in it, her dwelling-house.

Q. Who built that house?

A. Her husband.

Q. And was there a house on there at the date of the commencement of this action?

(Testimony of H. Fay.)

A. Yes, sir; it is partly in the street I will say.

Q. Was she in possession of that lot at that time?

A. Yes, sir.

Q. And is in possession of it still?

A. Yes, sir.

Q. Do you remember how long ago that house was built?

A. I think about six or seven years ago.

Q. Proceed?

A. Well, Parcels 7, 8, 9, 10, 11 and 12 in Block 5—

The defendant at this time objects to any testimony with reference to those parcels on the ground they are not mentioned in the complaint as being occupied by anyone.

Q. Do you know whether they are owned or occupied by anyone at the present time?

A. I do not, at the present time.

Q. Proceed, Mr. Fay?

A. Well, Lots 1 and 2 in Block 6 are occupied by Tim Creedon and on which there are two houses.

Q. They are not marked on this plat?

A. No, sir.

Q. But you say there are two houses there?

A. Yes, sir.

Q. Were they on those lots at the date of the commencement of this action, do you know?

A. They were not, I think.

Q. They have been built since. Well, were there any improvements on the lots at the date of the commencement of this action?

A. Yes, sir.

(Testimony of H. Fay.)

Q. What improvements?

A. They were fenced.

Q. By whom?

A. Ed. Woods and A. J. Dennerline.

Q. Who were in possession of the lots at the date of the commencement of this action?

A. Ed. Woods and A. J. Dennerline.

Q. Who occupies them now?

A. Tim Creedon.

Q. Were they actually occupied at the date of the commencement of this action?

A. Yes, sir.

Q. They are marked Joe Stubbler and A. J. Dennerline? A. Yes, sir.

Q. Are those the parties they actually occupy them now? A. No, sir.

Q. Who does occupy them now?

A. Tim Creedon.

Q. Do you know whether or not Tim Creedon is in possession of those lots under lease from anyone, or whether he is asserting ownership to them?

A. He is asserting ownership of them.

Defendant moves to strike the answer as being a mere conclusion of the witness.

Q. He is in possession of those lots?

A. Yes, sir.

Q. And was at the date of the commencement of this action? A. No, sir.

Q. Well, Ed. Woods and A. J. Dennerline were?

A. Yes, sir. He bought the lots with the improvements.

(Testimony of H. Fay.)

Q. All right, proceed. You have been describing lots 1 and 2 in Block 6? A. Yes, sir.

Q. What about lot 3?

Defendant objects to any testimony about lot 3 in Block 6 on the ground that it is not mentioned in the complaint as being claimed by anyone.

A. Well, I don't know; they claim two lots there; they have two lots there but I think one of those lots will be away off the line—beyond here, or at least on the west end of the south half of Block 6 there are no other buildings.

Cross-examination.

By Mr. JENNINGS.—Mr. Fay, you seem to have a pretty good memory; you remember who lives in all of those houses and everywhere else, and you remember who claims them, and you remember whether the person, each person occupies under a lease, and whether the lease has expired, and who built the buildings, and who built the fences and a lot of particulars like that—your memory has been refreshed a good deal since the last time I had you on the witness-stand and asked you the date of that transaction with Grant Baldwin hasn't it—your memory has grown in strength and clearness since that time, hasn't it? A. Oh, I don't know.

Q. Don't you know it has? Now, Mr. Fay, when was the last time you talked to Mary V. MacIntosh about this property?

A. Oh, I should judge a few months ago.

Q. Did you talk about that particular lot?

A. Yes, sir.

(Testimony of H. Fay.)

Q. What did she tell you about that lot, the one her name appears on there?

A. We were making assessments to pay for the costs of this action, and it was in reference to what she owed—

Q. In reference to what she owed?

A. Yes, her proportion of the assessment levied.

Q. How long ago has it been since you talked with W. W. Warne about his lots, the ones named with his name there?

A. I haven't seen him since he left the Mission.

Q. When was the last time before this action that you talked to Sol. Ripinski about this parcel that has got his name on it—that is to say, Parcel 5 in Block 4?

A. I don't know.

Q. You never did talk to him about it did you?

A. I don't know.

Q. How do you know that Sol. Ripinski claims that?

A. He told me he did.

Q. When?

Q. When we used to go to him to hire the hall for different purposes, years ago.

Q. Long before this suit was begun?

A. Yes, sir.

Q. How do you know he claimed it at the time this suit was begun?

A. Well, I didn't really know.

Q. What did he say he claimed down there when you asked him about it last?

A. Well, it was called the Ripinski building and

(Testimony of H. Fay.)

it was common rumor that it belonged to him—I don't know for a fact that he owns it.

Q. You don't know whether he sold that property before this suit was begun or not?

A. No, sir.

Q. You don't know whether W. W. Warne sold that property marked with his name there before this suit was commenced or not?

A. Yes, sir, I do.

Q. You haven't seen him, have you?

A. I have been communicating with him, yes.

Q. When was the last time you got a letter from Warne?

A. Well, I believe the last communication I had from him was about six months ago.

Q. Did he state in that communication that he still owned those lots? A. Yes, sir.

Q. What lots?

A. I wrote to him in regard to his assessment; we were all levied on, Cortz Ford was treasurer at the time for the town people, and as he was going away he asked me to write to Mr. Warne and tell him his assessment was so much.

Q. What lots—I don't suppose the different lots were mentioned in the letter?

A. No, just "his lots."

Q. Then you don't know what lots he was talking about when he referred to them in answer?

A. Yes, sir.

Q. How do you know?

(Testimony of H. Fay.)

A. Because I know the property he owns down there.

Q. The property he did own at one time—you don't know what property he claimed at the time of his answer, do you? A. Yes, sir.

Q. How do you know?

A. Because I have been on the ground this last eight or ten years and am familiar with the property.

Q. Mr. Warne's name appears on five different lots—does he own those now? A. Yes, sir.

Q. Do you mean to say he mentioned all those five lots when he answered your letter about the assessment? A. He didn't mention any lots at all.

Q. He just said his property? A. Yes, sir.

Q. And therefore you come up here, sir, and get on the stand to swear that Warne owns those five lots, and yet that's all you know about it?

A. When I say he claims them, I say he represents them; some of the lots are claimed by his wife and some by his wife's sister. He represents them and always paid any necessary expenses that were to be paid on them.

Q. But some of it belongs to his sister and some to his wife? A. I think so.

Q. Which ones belong to his sister and which to his wife you don't pretend to say? A. No, sir.

Q. Nor as to which part belongs to him?

A. I know part of them belong to him.

(Testimony of H. Fay.)

Q. What part of them belong to him—tell me now?

A. The parcels 7 and 8 in Block 1, the one on which he built a residence.

Q. How do you know it belongs to him—how do you know he hasn't conveyed them to his sister or his wife but still represents them?

A. I don't know that.

Q. And Katie Kabler may have conveyed that property of hers to somebody else for all you know?

A. Yes, sir.

Q. And Pete Johnson may have done the same thing? A. Yes, sir.

Q. And M. E. Handy may have done the same thing? A. Yes, sir.

Q. And William Bryson may have done the same thing? A. Yes, sir.

Q. And H. Cougar may have done the same thing? A. Yes, sir.

Q. And George Hinchman may have done the same thing? A. Yes, sir.

Q. And John Paddock may have done the same thing? A. Yes, sir.

Q. And Mrs. Jesse Craig may have done the same thing? A. Yes, sir.

Q. And Joe Stubbler and A. J. Dennerline may have done the same thing? A. Yes, sir.

Q. They may have conveyed that property and you not know anything about it? A. Yes, sir.

Q. And Henry Rappolt and E. J. Burger may have done the same thing and you not know it?

(Testimony of H. Fay.)

A. Yes, sir.

Q. And William Holgate may have done the same thing? A. Yes, sir.

Q. And Tim Vogel may have done the same thing? A. Yes, sir.

Q. And T. D. Valour may have done the same thing? A. Yes sir.

Q. And J. W. Martin, and James Fay may have done the same? A. Yes, sir.

Q. And Sol. Ripinski may have done the same thing? A. Yes, sir.

Q. And R. L. Weitzman may have done the same thing? A. Yes, sir.

Q. And V. Butterick may have done the same thing? A. Yes, sir.

Q. And E. A. Adams may have done the same thing? A. Yes, sir.

Q. And Fred Handy may have done the same thing? A. Yes, sir.

Q. And J. G. Morrison may have done the same thing? A. Yes, sir.

Q. And G. C. De Haven may have done the same thing? A. Yes, sir.

Q. And Tim Creedon may have done the same thing? A. Yes, sir.

Redirect Examination.

By Mr. LYONS.—But you know that nearly all of these parties that Mr. Jennings has just spoke to you about, have exercised acts of ownership over the property they claim since the beginning of this suit, don't you? A. Yes, sir.

(Testimony of H. Fay.)

Objected to as incompetent, irrelevant and immaterial, and move to strike the answer.

And be it further remembered that to further maintain the issues on their behalf, the plaintiffs called sundry native Indians to testify in their behalf; and it being stated to the referee that said witnesses could not speak the English language, WILLIAM JACKSON, a native, was thereupon by the referee duly sworn to interpret the English language into Indian and the Indian into English as the interrogatories of counsel were propounded and the answers thereto given; whereupon PETER BROWN, a native, was called and first duly sworn by the Referee through said interpreter, and in the same manner thereupon testified on

[Testimony of Peter Brown, for the Plaintiffs.]

Direct Examination.

By Mr. LYONS.—What is your name?

A. Peter Brown.

Q. Where do you live?

A. Haines Mission.

Q. How long have you lived in Haines?

A. A long time.

Q. How many years?

A. I have lived there since I am a young man.

Q. Are you an old man now? A. Yes, sir.

Q. You're a native of Alaska, are you not?

A. Yes, sir, I belong to the Chilkats.

Q. And you don't speak the English language?

A. No, sir.

(Testimony of Peter Brown.)

Q. Do you know Solomon Ripinski, the defendant in this action? A. Yes, sir, I do.

Q. How long have you know him?

A. I have known him since he came to Haines.

Q. Do you know one Billy Dickinson?

A. Yes, sir, I know him.

Q. Did you know Sarah Dickinson, the mother of Billy Dickinson, in her lifetime?

A. Yes, sir, I have known her when she came there; she never stops there now at all.

Q. How many years did you know her?

A. I don't know how many years; but I have seen her come into that place for awhile and go back; every once in awhile she came there.

Q. Is she living now?

A. I do not know whether she is living now or not.

Q. Do you know where Mrs. Dickinson lived in Haines?

Objected to as irrelevant and immaterial.

A. Yes, I do.

Q. Where did she live—in what part of Haines did she live?

A. Here is a big road right here, used to be our trail, we Indians, and she lived this side of it.

Q. I call your attention to Plaintiffs' Exhibit No. 1 and ask you if you know—I will state that this Plaintiffs' Exhibit No. 1 is a plat of a portion of the town of Haines. In the southeast corner of that plat is what is known as the Morrison hotel. Do

(Testimony of Peter Brown.)

you know where Morrison's hotel is situated in the town of Haines? A. I don't know his name.

Q. Do you know where the old hotel is in Haines? A. Yes, I know the hotel.

Q. Do you know where the postoffice is in Haines? A. Yes, sir, I know it.

Q. The United States postoffice. Well, where was Mrs. Dickinson's place she lived in with reference to the postoffice?

Objected to as immaterial, irrelevant and indefinite.

Q. Was it between the postoffice and the bay, or was it up the hill further away from the bay?

Objected to as immaterial and irrelevant, no time fixed at all, and indefinite.

A. Yes, this is the postoffice here, and Mrs. Dickinson's ground runs up a little below the postoffice.

Q. It runs up to a little below the postoffice?

A. Yes, he said so once.

Q. It runs up from the bay, or in the vicinity of the bay, up from the beach towards the postoffice?

A. Yes, sir, from her house up to that place.

Q. What did Mrs. Dickinson have where she lived?

Objected to as immaterial, irrelevant and indefinite.

—in the way of houses, or buildings, or fences?

A. She have built a warehouse out of logs, she built a log cabin there, and a house where she used to live, and a little garden.

(Testimony of Peter Brown.)

Q. Where was the little garden with reference to her house?

A. The back side of that house.

Q. Did she do any clearing there, clearing off the stumps or brush and trees?

A. Yes, sir, she did; I have done it for her; I dig some stumps out and bushes, I have cut the bushes out from her ground where she is going to put garden, and I put some posts there for her.

Q. Where did he put the posts?

Objected to as immaterial and irrelevant.

A. In the corner.

Q. On the corners of the ground he cleared for her?

A. He put up the posts for her, the ground he cleared for her, right on the corners.

Q. Did he enclose the ground for her with a fence?

A. I didn't build no fence around there for her at all; I just cut the bushes and the stumps right in the line of the posts, so it would look like a fence.

Q. How much ground, how large a piece of ground did he enclose in that line of brush?

A. I don't know how large it was, but I suppose if I would go to that place I could see where I put the posts, where I piled the bushes and the stumps.

Q. Do you know where Mr. Ripinski lives now in Haines? A. Yes, sir, I know it.

Q. Was that the piece of ground you cleared for Mrs. Dickinson? A. Yes, sir.

(Testimony of Peter Brown.)

Q. Did Mrs. Dickinson ever clear any other part of the town of Haines?

Objected to as incompetent, irrelevant, and immaterial, and no proper foundation laid.

A. No, sir.

Q. Did she ever improve or clear any other portion of the town of Haines?

Objected to as immaterial and irrelevant.

A. No, sir.

Q. Did she ever fence, inclose with a fence, any other portion of the town of Haines?

Objected to as immaterial and irrelevant, and no proper foundation laid.

A. No, sir, she never fenced any part of any ground in Haines Mission but that little garden—I have worked on it for her.

Q. I call your attention to Plaintiffs' Exhibit No. 1 again, and also to that little tract on the east of it that is marked Ripinski Homestead, to which I now point—that is the tract where Mr. Ripinski now resides, and that is between the town of Haines and the beach—is that the parcel of land that you cleared for Mrs. Dickinson?

Objected to as immaterial and irrelevant.

A. No, sir, he says it isn't. He says I have cleared a little garden for her and that's all, and that's not so big.

Q. Not so big as that where Ripinski is?

A. Yes, sir, not so big.

Q. When did you clear that ground for Mrs. Dickinson?

(Testimony of Peter Brown.)

A. Any time the spring came, she always told me to do some little work on her garden, every time the spring came, until she finished it.

Q. Was that before Mr. Ripinski went to Haines to live?

Objected to as immaterial and irrelevant.

A. Mr. Ripinski isn't there and we don't know Mr. Ripinski at all at that time; some time after that he came.

Q. Do you know whether or not Mrs. Dickinson sold her garden to Ripinski?

Objected to as immaterial and irrelevant and not the best evidence. Not the proper way to prove such a transaction at all.

A. I know she sold her place.

Q. To Mr. Ripinski, the defendant in this case?

A. To Mr. Ripinski, yes, sir.

Q. Do you know how much land she sold to him?

Objected to as incompetent and immaterial and irrelevant, and not the proper way to prove the contents of a deed.

A. Yes, I know.

Q. How much?

A. This is Ripinski's house now where he is living, and Mrs. Dickinson sold the garden the back side of his house around this way, and there was a log cabin here that run this way, with a log cabin she sold it.

Q. Is that the piece of ground he has described that he cleared for her and inclosed with this brush—is that the same piece of ground?

(Testimony of Peter Brown.)

A. Yes, sir.

Q. Were you present when Mrs. Dickinson transferred or sold that piece of ground to Ripinski?

A. No, sir, I wasn't present at the time, but Mrs. Dickinson told me Ripinski bought her place; she never tells us how much she got for it.

Cross-examination.

By Mr. JENNINGS.—How old are you, Peter Brown? A. I do not know my age.

Q. Is he a very old man?

A. You have seen me sitting here with gray hair.

Q. Ask him how long his name has been Peter Brown?

A. He says since the Judge has come in this to Skagway he has given me that name.

Q. His name was Peter French the last time he testified up here, wasn't it—ask him if his name wasn't Peter French?

A. My name used to be that the first time.

Q. Who asked him to come up here and swear this time to what he knows and be a witness?

A. This white man here.

Q. Which white man?

A. He says Mr. Fay.

Q. Does he know Mr. Fay pretty well?

A. Yes, sir.

Q. How long has he known Mr. Fay?

A. I have known Mr. Fay a long time now.

Q. He buys goods in Mr. Fay's store quite often, does he?

(Testimony of Peter Brown.)

A. I buy goods from the stores in Haines Mission; I don't come in Mr. Fay's store very often; sometimes I go there and buy something from him.

Q. Pretty often? A. Yes, sir.

Q. How much did Mr. Fay tell him he would pay him to come up here and be a witness?

A. I don't know how much he will pay me; he come around and took me for a witness; that's all I know.

Q. Did he say he would pay him for it if he would come up here and be a witness?

A. Of course yes, he says; if you can be a witness you will be paid for a witness.

Q. Did Mr. Fay tell him how much?

A. At the first time he came to me, he explained all this to me that I will get pay for a witness, just for a witness, he never tells me how much.

Q. Never told him how much?

A. He don't say how much; just tells me that I will get pay by the witness.

Q. Did he say who would pay it?

A. He says he told me we will be a witness, you be a witness also, that is, and I will pay you for your witness.

Q. He says, "I will pay you for it"?

A. Yes, sir.

Q. Did he ask Peter any other questions—any questions about Mrs. Dickinson? Just ask Peter if he told Mr. Fay what he was going to swear to.

A. No, sir; I never talk to him about it all; I was sitting right in my house and he came around,

(Testimony of Peter Brown.)

the time was pretty close, and he came around in a rush and I don't have time to say anything about it all.

Q. Mr. Fay came around and got him to go on the boat and told him he would pay him as a witness if he would come up here and be a witness—is that right?

A. Yes, he told me that we will go up to the Court and he will be one of the witnesses, too, and you will go too; so I got ready in a short time to go.

Q. Ask him if he was very anxious to get pay for a witness?

A. I didn't go around in that place and ask for it if I can be a witness so as to earn money; of course, I am just sitting in the house there and he was the first man that came to me that I can be a witness so of course I have to come if I am asked.

Q. Ask him if he was present when Mrs. Dickinson signed the paper and gave it to Ripinski about the land?

A. No, sir; I wasn't present, but Mrs. Dickinson have told me that she sold the place.

Q. That's all, was it, that she told him?

A. That's all.

Q. But she didn't tell him how much she got?

A. No, sir.

Q. You say you live at Haines?

A. Yes, sir.

Q. You live at Berner's Bay, don't you?

A. I never lived at Berner's Bay at all, but Seward City; a long time after Mrs. Dickinson came

(Testimony of Peter Brown.)

to Haines, Seward City was discovered and I went down there and lived there for a while.

Q. How long?

A. I don't know how long; I have got a home in Haines Mission, and therefore I never stay away from my house; one time I came down to Seward City, but I never stay there very long.

Q. You lived at Seward City, and you sold your place at Seward City just two years ago, didn't you?

A. Yes, sir.

Q. And up to that time he lived over at Seward City, up to two years ago?

A. Well, I lived just before I sold my place in Seward City; I used to live there every once in a while, but I sold my place—I never lived there.

Redirect Examination.

By Mr. LYONS.—Is this the season of the year when you do your fishing, when you're fishing?

A. Yes, sir; this is the time we do fishing; after this Fourth of July.

Q. Can he make as much catching fish as he could coming here to be a witness? A. No, sir.

Q. He stated a moment ago he lived at Seward; ask him whether he lived there permanently, or just went there to get work sometimes?

A. I went down to Seward City because there was a gold mine there, and lots of work there, and I went down there in the purpose of getting work.

Q. Did you understand me when I asked you whether you could earn more money fishing, or acting as a witness in this case?

(Testimony of Peter Brown.)

Objected to for the reason that the question put to the witness was perfectly plain, intelligible and unambiguous, and the witness answered it plainly, intelligently and unambiguously and directly, and counsel now in repeating this question is trying to lead the witness,

Q. I withdraw the question, and I will ask him and see if he did understand: Which can you make the most money, catching fish or testifying as a witness in this case?

Same objection.

A. He says fishing is a very good for us—for myself also. I can make much money in a day fishing, and just because this white man came to me and told me to come up here as a witness I have to come up here to this place and leave my job there where I can make the most money; I don't expect to make much in this witness fees for testifying.

Recross-examination.

By Mr. JENNINGS.—Ask him how much he does expect to make as a witness in this case?

A. I do not know what you say about this at all. Suppose you are asked by somebody to go up to that place and because you get paid for it and you will go; that is the same with myself. I am told to come here, and they told me I will get pay, so I have to come here.

Q. Ask him if he don't expect to get as much pay as a witness as he would for fishing?

A. I don't expect very much from this witness.

Q. Don't he know how much he does expect?

(Testimony of Peter Brown.)

A. I don't know how much I am expecting, but I am keeping account of the days, the time we came up here.

A. He is keeping account of it. Ask him if he fishes very often? A. Yes, sir.

Q. And who does he sell his fish to?

A. I sell my fish to the cannery.

Q. How much a day does he make fishing?

A. When the big run, if those days when there is a big run, I make twenty dollars a day, sometimes.

Q. Twenty dollars a day?

A. If there is lots of fish I make twenty dollars in that day.

Q. Ask him what he does with his surplus cash—if he puts it out at interest?

Q. What do I do with the cash I have, he says? I spend it for my clothes and living.

Q. He spends twenty dollars a day—all right. Now ask him how many times he has been a witness?

A. This is the second time I am a witness in the Ripinski case.

Q. How many times altogether, any cases that he has been a witness in?

A. This is the third time.

Redirect Examination.

By Mr. LYONS.—Ask him if it is not true that some of the natives down there refused to come up to testify in this case because they wouldn't be paid anything but their witness fees?

Objected to as immaterial and irrelevant and calling for a self-serving declaration.

(Testimony of Joe Kajikan.)

A. Yes, sir; some of those Indians are refused to come up here because they would like to stay down there where they can make the most money.

[**Testimony of Joe Kajikan, for the Plaintiffs.**]

* JOE KAJIKAN, a native, being called to testify on behalf of the plaintiffs, and first duly sworn through said interpreter, testified on

Direct Examination.

By Mr. LYONS.—What's your name?

A. Joe.

Q. Where do you live? A. Haines.

Q. How long have you lived in Haines?

A. I don't know how long; I have never kept account of it.

Q. You're an old man, too, aren't you?

A. You have seen me here; I am an old man; I don't know much about anything at all; I am old before I know something.

Q. Well, has he lived in Haines all his life?

A. Yes, sir.

Q. You're a native Alaskan, are you not?

A. I wouldn't say I belonged to any other place; I belong to this place up here.

Q. You don't speak the English language well, do you? A. No, sir.

Q. Do you know Solomon Ripinski, the defendant in this action?

A. I have known Sol. Ripinski; he is our friend.

Q. How long have you known Mr. Ripinski?

A. I have known him, of course, for a long time.

(Testimony of Joe Kajikan.)

Q. Do you know Mrs. Sarah Dickinson?

A. Yes, sir.

Q. How long did you know Mrs. Dickinson?

A. I don't know how long, but it's a pretty long time now.

Q. Do you know a man they call Billy Dickinson?

A. Yes, sir.

Q. Did Mrs. Sarah Dickinson ever live in Haines?

A. I knew her there, she was a daughter of Mrs. Dickinson.

Q. Did Mrs. Sarah Dickinson ever live in Haines?

A. Well, she don't live there very long; she stays there awhile and then goes away again.

Q. Did she have any buildings or ground in Haines?

A. Who, Sarah?

Q. Yes?

A. I don't remember that Sarah has a house or ground in Haines, but her father used to have a house and ground in Haines Mission.

Q. Sarah Dickinson is the mother of Billy Dickinson, isn't she?

A. Yes, sir.

Q. Where did Sarah Dickinson live in Haines?

A. If she comes to Haines she lives in her father's house.

Q. Is that the same house, or is it in the same place as the house now occupied by the defendant Ripinski?

A. Yes, sir, that's the same place, the same house.

Q. You'll have to excuse me, Bob (Mr. Jennings), if I lead these witnesses—did Mrs. Dickinson or her father do any improving of the ground right close to her house?

(Testimony of Joe Kajikan.)

A. Of course; it is the custom of the white people to clear around her house—or his house.

Q. Well, did Mrs. Dickinson clear around—did she or her father clear around their house in Haines?

A. Yes, sir.

Q. Did she have a garden there?

A. They had a garden alongside of her house.

Q. Was there any fence around her garden?

Objected to as immaterial and irrelevant.

A. No, sir.

Q. How much land or ground did Mrs. Dickinson improve or claim there?

Objected to so far as the word “claim” is used, for the reason that this witness is incompetent to testify how much ground Mrs. Dickinson claimed.

A. Well, white man, I don’t know how big his ground is, and of course I don’t know just how many feet, how big his ground is.

Q. How far did it extend up the hill easterly (?); did it extend up the hill as far as the Morrison hotel?

Objected to as immaterial and irrelevant, and no foundation laid.

A. He says I will describe just how much I know about this place; he says Mrs. Dickinson’s place, you know where Mr. Odell’s place is—it runs up to Mr. Odell’s place, not any further than Mr. Odell’s building now, and up this way to the north the width, you know where Mr. Ripin’s store, it runs up to there, and the other way it runs up to the corner of that big building that stands on the corner of the street.

(Testimony of Joe Kajikan.)

Q. Does it extend, or did it extend up the hill—ask him if he knows where the U. S. Postoffice buildings at Haines? A. Yes, sir, he knows.

Q. Did it extend up the hill west as far as the U. S. Postoffice? A. No.

Q. Did Mrs. Dickinson ever improve or claim any other part of the town of Haines than the portion he has just described?

Defendant objects to the word “claim” as it is not shown the witness understands what you mean by the word claim; and for the further reason that this witness is incompetent to testify what Mrs. Dickinson claimed; and further object to the question because two questions are embraced in the one, the question as to whether she improved land being one question and the question as to what she claimed is another.

A. No, sir.

Q. Did you ever have any conversation with Mrs. Dickinson or her father concerning how much land she claimed in Haines?

Objected to for the reason that no time is fixed.

Q. We withdraw the question. Did you ever have any conversation with Mrs. Dickinson or her father before the defendant Ripinski went to Haines, concerning what land she claimed to own or her father claimed to own?

Objected to on the ground that the word “claim” as used, without any further explanation as to what it means, is unintelligible to the witness, and is using a general legal term to a child of the forest.

A. No, sir.

[**Testimony of Paddy Gu-Nate, for the Plaintiffs.**]

PADDY GU-NATE, a native, being called to testify on behalf of the plaintiffs and first duly sworn through said interpreter, testified as follows on

Direct Examination.

By Mr. LYONS.—What is your name?

A. Paddy.

Q. Where do you live? A. Haines.

Q. How long have you lived in Haines?

A. It's a long time now.

Q. (By Mr. JENNINGS.)—Don't you speak English, Paddy? (No answer.) You speak good English, don't you, Paddy? (No ans.) Give him a dollar, Sol., and he'll talk quick enough—what are you smiling about, Paddy?

By Mr. LYONS.—I see Sol. is right there with the dollar—do you know Solomon Ripinski, the defendant in this case? A. Yes, sir.

Q. How long have you known him?

A. I have known him for a long time.

Q. Do you know Billy Dickinson?

A. Yes, sir, a long time.

Q. Did you know Sarah Dickinson in her lifetime? A. Yes, sir, I knew her.

Q. How long have you known her?

A. When her mother lived in that place she came there every once in a while.

Q. How long have you known Mrs. Dickinson?

A. I have known her for a long time.

Q. Were you in Haines when Mr. Ripinski came there to Haines? A. Yes, sir.

(Testimony of Paddy Gu-Nate.)

Q. Was Mrs. Dickinson living in Haines at that time, or did she have any property in Haines?

A. Yes, sir.

Q. Where—what part of Haines did she have property in?

A. The natives used to have a trail right through that place there and she lived on this side of that trail—a small trail it used to be.

Q. How far from the beach?

A. It isn't very far from the high-water mark.

Q. How much ground did she have down there?

Defendant objects to the use of the indefinite term "how much ground did she have."

Q. Withdraw the question. How much ground did she improve down there?

A. There is a piece of ground there she had cleared out; that is the only way we can understand—that she cleared a piece of ground that belonged to her.

Q. Do you know where the U. S. Postoffice at Haines is? A. Yes, sir.

Q. Did the ground that she cleared extend as far up the hill in a westerly direction as the postoffice?

Objected to as immaterial and irrelevant.

A. Not any further than the postoffice—a little below.

Q. It didn't extend as far as the postoffice then?

A. Yes, sir.

Q. How large a piece of ground had she cleared before Solomon Ripinski went to Haines?

Objected to as immaterial and irrelevant.

(Testimony of Paddy Gu-Nate.)

A. It wasn't very large the ground that she cleared around her house; we can see the bushes piled up right there.

Q. Did she have any fence around the ground that she cleared around her house?

Defendant objects to the question as irrelevant and immaterial.

A. No, sir.

Q. Did Mrs. Dickinson ever clear any other ground except what he has just described, in the town of Haines?

Objected to as immaterial and irrelevant and because it assumes the witness knows whether she did or not.

A. No, sir; just around her house.

Q. Did you ever have any conversation with Mrs. Dickinson about her holdings—her land, in Haines?

A. No, sir.

Recess until 1:30 this date. (P. M.)

1:30 P. M., July 8th.

By Mr. JENNINGS.—Mr. Lyons, I have a witness here who wants to get away on this boat, and if you have no objection I will call him out of his regular turn, and have him give his testimony now.

By Mr. LYONS.—We have no objection.

[**Testimony of Joseph Carl, for the Defendant.**]

Whereupon JOSEPH CARL, a witness called to testify on behalf of the defendant, and being first duly sworn, testified as follows on

Direct Examination.

By Mr. JENNINGS.—What is your name?

A. Joseph Carl.

Q. How old are you, Mr. Carl?

A. Sixty-six.

Q. What is your occupation?

A. Fisherman.

Q. Where do you reside? A. At Chilkat.

Q. How far is that from Haines?

A. About as near as I can judge, it is three or four miles.

Q. Did you reside there,—or where did you reside, and what was your occupation in the latter part of 1897?

A. I was a fisherman and watchman at the cannery—Murray's cannery.

Q. Do you remember when an expedition came up into those waters around Chilkat and Pyramid Harbor called the Perry-Humbert Expedition?

A. Yes, sir, I do.

Q. That was in the winter of 1897, was it not?

A. I think it was.

Q. A short time after that expedition came up there, did you have occasion to go over by the old trail there that lead out from Haines Mission?

A. No, I came back that way; I went up along the beach there after some horses for Jack Dalton and

(Testimony of Joseph Carl.)

I got the horses and came out that trail from the Mission—it was drier than bringing them back by the beach at high tide.

Q. Did you at that time observe a fence along that old trail? A. Yes, sir.

Q. Whose fence was that—

A. It was supposed to be—

Plaintiffs object to any testimony concerning the ownership of that fence unless the witness knows who owned it—his suppositions we object to.

Q. Whose fence was that?

A. As near as I know it was supposed to be Mr. Ripinski's.

Q. Commonly known as the Ripinski fence?

Objected to as not the proper method of proving the ownership of anything.

A. Yes, sir.

Q. What kind of a fence was that?

A. A wire fence.

Q. How many wires?

A. I think two—I'm not sure, but I think two; I know I run the horses into it to catch them.

Q. And the horses didn't run over it until you got up to them?

A. Yes, sir; it held them all right.

Q. That, as I understand you, was along the old trail?

A. Yes, sir, along the trail I was coming through.

Q. Now, Joe, I call your attention to a map that is in evidence here, called Plaintiffs' Exhibit No. 1, and I call your attention to the ground here marked

(Testimony of Joseph Carl.)

“Mission,” and also to these sectional subdivisions to the north of it, supposed to represent Haines. The last house is about at this point where you see this covered space in Lot 6 Block 5, that’s the last house that’s there now. Now, about where with reference to that last house on that trail was it that you run the horses up against that fence?

A. I couldn’t say now; it was after I crossed the small creek where the sawmill was, over here, that I came to a stop there at that fence and caught my horses.

Q. About how far was it from the beach?

A. Well, I couldn’t exactly say that, it was so many years ago, but as near as I could point it out now it was between where that sawmill was and where Mr. Vogel took up his corner there.

Q. Well, that is away down here?

A. Yes, sir, between them two places that I run the horses in—they seen the fence and stopped—where I tried to catch them, right in there somewhere, but the exact point I can’t give it.

Q. Did that fence you saw there go as far down as Vogel’s?

A. Yes, a little further, I think; he wasn’t built there at the time, of course.

Q. Went from where, you say—from where you saw it up at the sawmill down as far as Vogel’s?

A. As near as I remember, past Vogel’s.

Q. And it was a two-wired fence?

A. Yes, sir, I’m sure of that because one wire wouldn’t hold the horses.

(Testimony of Joseph Carl.)

Q. And whose fence was that commonly reputed to be—

Objected to as not the proper method of proving the ownership of anything; and it is not shown there was anybody there at Haines to have or to constitute common knowledge.

By Mr. JENNINGS.—I propose to supplement this testimony; it is necessary that I call him out of his turn, Mr. Lyons.

By Mr. LYONS.—I don't object to his testifying out of his turn, but we object to this witness testifying to "common knowledge" when it is evident from his testimony there was no one at Haines to have any such a thing.

By Mr. JENNINGS.—You say it was commonly reputed as Sol. Ripinski's fence, Mr. Carl?

A. Yes, sir.

Q. Now, did you know an Indian woman named Mrs. Sarah Dickinson? A. Yes, sir.

Q. She lived over at Chilkat?

A. Yes, sir, lived at Chilkat and lived at Haines.

Q. Did you—were you present when a deal was made between Mrs. Dickinson and Sol. with reference to some land over there at Chilkat—at Haines?

A. Yes, sir, I was in his store when the agreement was made.

Q. Can you fix the date of that occurrence?

A. It was sometime in December, I couldn't say.

Q. Of 1897?

A. Yes, sir, as near as I can get at it; I couldn't

(Testimony of Joseph Carl.)

fix the date because it is impossible for a man to think of a day eleven or twelve years ago.

Q. Was anything said at that time that you remember, as to how much land she was conveying to Sol., or how much she claimed?

Objected to as incompetent, irrelevant and immaterial—if the deed is any good at all it will describe what was conveyed.

A. It was supposed she sold all she owned over there to Haines at the time, I don't know what it was; she sold part of it before; I was witness to a deed she sold an acre to Mrs. Dalton.

Plaintiffs' counsel moves to strike the answer of the witness as being a mere supposition and not a statement of fact.

Q. That was the understanding that you gathered from what was—

Objected to as asking for the witness' understanding and not a statement of fact.

Q. Do you know as a matter of fact what she did own or claim over there? A. No, sir.

Q. Now, when was it with reference to the time, that you saw this fence you have testified about?

A. It was sometime after that.

Q. How long after you don't undertake to say?

A. No, I couldn't say; I think it was pretty near, might have been, let's see—no I couldn't say exactly how long it was after that time now.

Q. At the time you saw that fence there was anyone living on that tract? A. No, sir.

(Testimony of Joseph Carl.)

Q. Except—were there any buildings on that tract except those down on the beach?

A. No buildings on there outside of the Mission property, except Mr. Ripinski's and Mrs. Dickinson's.

Q. There were, then, buildings outside the Mission property, belonging to Mrs. Dickinson?

A. Yes, sir.

Q. Do you know a man by the name of Harry Fay?

A. Yes, sir.

Q. Was he there at the time?

A. I don't remember.

Q. Was there any tent that you saw at that time on this tract?

A. No, sir.

Q. Any location or settlement there?

A. No, sir.

Cross-examination.

By Mr. LYONS.—What did you say your name was?

A. Joseph Carl.

Q. You're a fisherman by trade, are you?

A. Yes, sir.

Q. Where were you fishing in 1897?

A. Fishing generally in Chilkat and around, and sometimes I would be—at one time I was watchman at the cannery—in the summer-time I would fish and in the winter-time be watchman and everything about the cannery.

Q. You're a particular friend of Mr. Ripinski, are you?

A. I am a friend of everybody if he is a man; I am a friend of his, yes.

(Testimony of Joseph Carl.)

Q. You have to find out whether he is a man though before you are friendly—is that it?

A. No, I don't want to have to find out whether he is a man; I will take him as a man until I find out something different.

Q. Where did you find this fence you speak about?

A. On this trail, where I was coming through there.

Q. I believe you stated there were two wires on that fence because you thought one wire wouldn't hold the horses? A. I think so.

Q. I'm not asking what you think, sir; just wait a moment until I put the question; what you think, sir, isn't material in this cause—what you know may be. I ask you now if you know how many wires there were on that fence?

A. I couldn't say that I know how many it was, wouldn't undertake to after twelve or thirteen years; I don't know exactly, but as near as I can remember now there was two.

Q. How far did you follow that fence at the time?

A. All the way down, clear to the beach.

Q. How many white people were there in Haines at that time?

A. There was no people there only—but the Missionary, and a few down on the beach, Mr. Ripinski—

Q. And yet you state that it was common knowl-

(Testimony of Joseph Carl.)

edge in that community that that was Mr. Ripinski's fence? A. Yes, sir.

Q. If there were no people there, how could a fact of that kind gain common knowledge, sir, or how could it be considered common knowledge that that was Ripinski's fence when there was nobody to know anything about it?

A. There was a few people over at Chilkat; there wasn't very many people in the country at that time, and when one man knew anything we all knew it.

Q. Who told you that it was Ripinski's fence?

A. I couldn't say whether there was one man, or two or more there at Haines at the time,—white men.

Q. I ask the witness to respond to my question?

A. What was the question?

Q. I say can you name a single man that told you that was Ripinski's fence?

A. I couldn't do it now; no.

Q. And you swear that it was common knowledge in the community there that that was Sol. Ripinski's fence?

A. I don't ever believe anyone told me, but we were all down around the A. P. A. there, we knew it.

Q. There wasn't a soul that told you that was Ripinski's fence, and yet you swear that everybody in the community at Chilkat knew it?

A. Yes, sir, I'll own up to that point.

Q. Now, you said it was "supposed" Mrs. Dickinson conveyed her parcel of land there at Haines to Mr. Ripinski? A. Yes, sir.

(Testimony of Joseph Carl.)

Q. How much land did she actually occupy down there? A. I couldn't tell you.

Q. You have been all through that vicinity down there?

A. Yes, sir, for the last twenty years I have.

Q. How much land did she have cleared in the vicinity of her house at Haines?

A. Well, as near as I could say she had a little piece of land, I never measured it; she sold that, as near as I can say, or nearly all of it—or some of it at least to Mrs. Dalton.

Q. Then she had no other land cleared except what she sold to Mrs. Dalton, is that your understanding?

A. I couldn't say—I don't remember of any.

Q. Her house was down here close to the beach?

A. Yes, sir.

Q. I now call your attention to Plaintiffs' Exhibit No. 1, and particularly to that portion called "Ripinski Homestead"; now, it was in the vicinity, or within that square there marked Ripinski Homestead where Mrs. Dickinson had her house, was it not? A. Yes, sir.

Q. Now, will you state about what part of that, where her house was at that time?

A. Well, I couldn't say—if you will point out where the old trail comes through there—

Q. This is it, where Main Street is?

A. This then is the piece Mrs. Dalton bought.

Q. Yes.

(Testimony of Joseph Carl.)

A. Well, she had one right here where this store is, somewhere here right near the trail.

Mr. LYONS.—Witness points to the easterly extremity of the parcel of land marked “Ripinski Homestead” on Plaintiffs’ Exhibit No. 1.

Q. Now, where had she done any clearing around that house?

A. Whether I took notice in going through that trail—of course I never took much notice, but it was right in here on Mrs. Dalton’s ground.

Q. To the south then, of what is designated as the Ripinski Homestead?

A. Yes, sir, that way is to the south.

Q. And how far was it from her house where the clearing was done?

A. Well, not very far; I couldn’t tell.

Q. About how many feet?

A. I couldn’t measure that. Maybe 150, 200, or 300 feet.

Q. Not to exceed three hundred feet from her house? A. Yes, sir; I could exactly say.

Q. You don’t know who built that fence, do you?

A. No, sir.

Q. You don’t know whether it was done by the Presbyterian Mission people or not, do you?

A. I don’t know anything about *ah*.

Q. You never saw Solomon Ripinski out there swinging a hammer, did you, and building that fence? A. No, sir.

Q. And you never saw anyone out there that pretended to be building fence for Ripinski?

(Testimony of Joseph Carl.)

A. No, sir, I didn't see anyone building; I found it there and that's all I know about it.

Q. You were residing with a native woman at Haines about that time, were you not?

A. No, sir, I was not.

Q. Aren't you pretty chummy with a native woman who is a relative of Mrs. Dickinson?

A. No, sir.

Q. You don't know her at all, I suppose?

A. No, sir, I never had only one woman there and I kept her one winter, and I hope to God I'll never keep another one. I had her seven months and in seven more I would have been in a lunatic asylum; but that was long afterwards, though.

Q. Now, seriously, Mr. Carl, you don't know whose fence that was, who built it?

A. No, I say I don't.

Q. You don't know whether the Presbyterian Mission people built it, or the Perry-Humbert Expedition, or who?

A. Maybe President Roosevelt built it, or Abe Lincoln, for all I know.

Q. You say you are reasonably friendly with Sol. Ripinski?

A. I am friendly to everyone—no more to Ripinski than I am to you.

Q. Mr. Ripinski has been your bondsman a time or two, hasn't he, Mr. Carl?

A. He never went bonds for me, because I never wanted a bond.

(Testimony of Joseph Carl.)

Q. Mrs. Dickinson, so far as you know, never cleared one foot of land on the tract where Haines is located now?

Objected to as immaterial, irrelevant and not proper cross-examination.

A. I never seen her clear any land at all.

Q. There was no clearing, as a matter of fact, on what is now the town of Haines, until Mr. Fay went there?

Objected to as immaterial and irrelevant.

A. I don't remember of any.

Q. Do you remember the time Mr. Fay went there?

A. I remember the time, about, yes, sir.

Q. When Mr. Fay went there, as a matter of fact this whole tract where Haines is now was covered with timber, wasn't it?

Objected to as immaterial, irrelevant and not proper cross-examination.

A. Timber and brush, and just like any other new country.

Q. And there was no part of that land enclosed by anyone, with a fence?

Objected to—he has testified—well, he did testify about the fence.

Q. The fence didn't enclose any of it so far as you know?

A. The fence? All I know, sir, is that I run my horses into it—

No. 1782

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

(In 3 Volumes.)

SOLOMON RIPINSKY,

Appellant,

vs.

G. W. HINCHMAN, WILLIAM HOLGATE, JOHN G. MORRISON, J. A. NETTLES, CORTEZ FORD, TOM VALEUR, R. M. ODELL, D. BUTRICH, E. J. BERGER, IDA JOHNSON, M. E. HANDY, FRED HANDY, G. C. DE HAVEN, TIM CREEDON, BENJAMIN A. MAHAN, THOMAS DRYDEN, ED. FAY, JAMES FAY, H. FAY, W. W. WARNE, THOMAS VOGEL, C. BJORNSTAD, H. RAPPOLT, KAREN BJORNSTAD, M. V. McINTOSH, MARY V. McINTOSH, JESSE CRAIG, E. A. ADAMS, J. W. MARTIN, A. J. DENNERLINE, S. J. WEITZMAN, PETER JOHNSON, MRS. KATE KABLER, and V. READE,

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(Testimony of Joseph Carl.)

Q. You have testified now what you know—I am trying to find out what you don't know?

A. I don't want to know any more about it.

Q. You say that fence was along to the south side of Main Street, or what was the trail?

A. No, the north side.

Q. You don't know how far it extended?

A. I knew it commenced somewhere where the creek was near the mill.

Q. And you don't know whether any land was inclosed by it or surrounded that tract—you never saw any other side of it, did you?

A. I never went over it hunting to see anything.

Q. And there was absolutely no evidence of possession or occupation of the land on which the town of Haines is now situated when you went there?

Objected to as too general, and asking the opinion of the witness on a point of law, asking him if there was any evidence of possession without explaining to him what would constitute evidence.

A. There was no one there on that part of the ground when I was there, not one house. The first house there was built by Mr. Spooner and I was right there when he was putting it up and that was the Northern Hotel—that's the first house built there outside of the house of Mrs. Dickinson.

Q. In fact, all west of the Ripinski and Dickinson tract where that house was, was all wilderness, wasn't it?

A. It was a wilderness, yes, commonly speaking.

(Testimony of Joseph Carl.)

Redirect Examination.

(By Mr. JENNINGS.)

Q. Now, Mr. Carl, you started to say you saw some clearing of Mrs. Dickinson's on the Dalton acre, but you didn't know how far back it ran; you don't know whether she had land cleared and used as a garden on this Ripinski Homestead,—all you testified to is just what you saw in passing?

A. All I saw, yes, sir.

Q. And you saw some land cleared on the Dalton acre?

A. All I testify to at all is what I saw and actually know; I am only telling it as near as I can get to just what I know, and I don't want to say anything more than I know.

Q. You say you were a fisherman and watchman; I'll ask you if you didn't occasionally do some work for Jack Dalton?

A. Yes, sir.

Q. You were working for him at that time?

A. Yes, sir, he asked me to bring over the mules; I was at that time working as watchman at the Murray cannery, and he asked me to take a day off and fetch over the mules.

Q. Do you know whereabouts on this plat—I call your attention to Plaintiffs' Exhibit No. 1—where that old sawmill was, or the swamp, or ravine—creek there?

A. Away to the farther end of it.

Q. Away to the westerly end?

A. Yes, sir, to the west end.

Q. To about the extreme end of this map?

(Testimony of Joseph Carl.)

A. About the extreme end—I can't just tell where from this.

Q. And you saw the fence all the way down from there to Vogel's place?

A. Yes, sir, a little further, if anything.

Recross-examination.

By Mr. LYONS.—You never saw a fence anywhere else down there, did you?

A. I didn't take any notice.

[**Testimony of Tom Phillips, for the Plaintiffs.**]

TOM PHILLIPS, a native called to testify on behalf of the plaintiffs, and being through the said interpreter first duly sworn, testified on

Direct Examination.

By Mr. LYONS.—What's your name?

A. Tom.

Q. Tom what? A. Tom Phillips.

Q. Where do you live? A. Haines.

Q. How long have you lived in Haines?

A. I lived in Haines a long time.

Q. Do you know Solomon Ripinski?

A. Yes, sir.

Q. How long have you known him?

A. A long time now.

Q. Were you living at Haines before Ripinski went to Haines? A. Yes, sir.

Q. Do you know Billy Dickinson?

A. Yes, sir.

Q. Did you know his mother, Mrs. Sarah Dickinson? A. Yes, sir.

(Testimony of Tom Phillips.)

Q. Do you know where Mrs. Dickinson lived in Haines? A. Yes, sir.

Q. I now call your attention to Plaintiffs' Exhibit No. 1, and I call your attention particularly to what is designated on that plat as Ripinski Homestead, and I indicate to you the boundaries of what is called on this map the "Ripinski Homestead." The homestead is immediately west of the postoffice and the Morrison building, between the Morrison hotel, or U. S. Postoffice and the bay. Now, I'll ask you if that's the same ground that Mrs. Dickinson lived on when she was in Haines?

A. The ground runs up a little below the post-office—little below.

Q. Did it extend up as high on the hill as any buildings that are now occupied by white people along to the west of this Ripinski tract—did Mrs. Dickinson's land extend westerly so as to include any of the land that is now marked by shaded spaces indicating buildings on Block No. 1?

Objected to as immaterial and irrelevant and not binding on the defendant, and is not the proper way to prove where a person's land lies or what he claims.

A. His answer is that her place, her ground, don't run up to the place where the houses is; down below that.

Q. How much land did Mrs. Dickinson clear there?

Objected to as immaterial and irrelevant.

(Testimony of Tom Phillips.)

A. Not very large; she cleared her garden, that's all.

Q. Ask him if he knows about how large a space or tract was included in her garden?

A. There is a house on the ground; her house used to be there, and there is a place not very big around the house up the hill and up this way to the north, not very long—that's all she has.

Q. Is that the same ground that Mr. Ripinski now occupies in Haines?

Objected to, unless counsel explains to the witness that the word "occupy" means—the legal significance of it.

Q. Question withdrawn. Is that the same place as Mr. Ripinski lives on at this time, and has his store on—is that the same land Mrs. Dickinson had?

A. Yes, sir, that's the same place.

Q. Did Mrs. Dickinson ever improve or clear any other part of the land now embraced within the town of Haines?

Objected to as immaterial and irrelevant.

A. No, sir.

Q. Were you in Haines when Mrs. Dickinson sold her holdings there to Ripinski? A. No, sir.

Cross-examination.

By Mr. JENNINGS.—Ask him if he ever had any conversation with Mrs. Dickinson about any other part of the land she owned at Haines except this little piece the house where she lives in and the garden around it is—ask him if he ever heard her

(Testimony of Tom Phillips.)

say anything about any other part of the town of Haines? The land at Haines? A. No, sir.

Q. Never heard her say anything. Then when he speaks of the little house and the garden around it, that's all he knows, is it not—that's what he means when he says her land didn't extend up as far as the postoffice? Ask him if he means simply that that part cleared, the little garden tract, didn't extend up that far?

A. He says, "I won't add anything more to it. I am talking about her ground, how far it run up the hill and her little garden."

Q. How far her little garden ran up the hill? Ask him if that's what he means.

A. Yes, sir, that's just what I'm talking about; there is no garden she owns beside that garden—that's all we're talking about now.

Q. That little garden is what he is talking about?

A. Yes, sir.

Q. That's what he means when he says her land didn't go up as far as the postoffice?

A. Yes, sir.

Redirect Examination.

By Mr. LYONS.—Did Mrs. Dickinson ever clear or improve or fence any other land in the vicinity of Haines except the garden you have described?

A. Except the garden we are talking about? No, sir.

Q. Nothing else? A. No, sir.

Q. Did Mrs. Dickinson ever show you the premises she claimed in Haines?

(Testimony of Shorty Jackson.)

Objected to as immaterial and irrelevant unless the time is fixed.

Q. I'll ask him the date later. Put the question, Jackson? A. No, sir.

[Testimony of Shorty Jackson, for the Plaintiffs.]

SHORTY JACKSON, a native, being called as a witness on behalf of the plaintiffs and first duly sworn through said interpreter, testified on

Direct Examination.

By Mr. LYONS.—What is your name?

A. Shorty Jackson.

Q. Where do you live?

A. Haines Mission; stopping at Haines all the time.

Q. Do you know Solomon Ripinski, the defendant in this action? A. Yes, sir.

Q. How long have you known him?

A. I have known him not very long ago.

Q. Were you in Haines when Ripinski first went there? A. Yes, sir.

Q. Did you know—or do you know one Billy Dickinson? A. Yes, sir.

Q. Did you know his mother, Mrs. Sarah Dickinson in her lifetime?

A. Yes; I have known her a long time before.

Q. Where did Mrs. Dickinson live in Haines?

A. He says I am traveling around all the time right there in Haines and every once in a while I come to her house.

Q. Well, where was her house in Haines?

(Testimony of Shorty Jackson.)

A. He says it has kind of mixed me up.

Q. Well, I will withdraw that question, and put it in a more definite form. Did Mrs. Dickinson live farther away from the beach at Haines than the U. S. Postoffice, or did she live between the beach and the postoffice?

A. It was quite a ways down from the postoffice, where Mrs. Dickinson's house is.

Q. That is, you say quite a ways down. It was nearer to the beach than to the U. S. Postoffice, is it?

A. It is pretty close to the beach; not very far.

Q. Did the tract of land that Mrs. Dickinson had cleared there extend as far up the hill in a westerly direction as the postoffice?

Objected to as immaterial and irrelevant.

A. Her ground runs up below the postoffice.

Q. What did Mrs. Dickinson do towards appropriating the land there or towards improving it?

Objected to as incompetent and irrelevant.

A. She does not—she didn't do no clearing her ground except that little garden.

Q. Did she ever clear any other part of the ground on which is now situate the town of Haines?

Objected to as immaterial and irrelevant.

A. No, there was no other place besides.

Q. Did she ever improve in any way or in any manner any other portion of the ground on which is situate the town of Haines?

Objected to as immaterial and irrelevant.

A. No, sir.

Q. Did she ever fence any other part of the town of Haines?

A. No, sir.

[**Testimony of Chief George, for the Plaintiffs.**]

CHIEF GEORGE, a native, witness called on behalf of the plaintiffs, and being first duly sworn through said interpreter, testified as follows on

Direct Examination.

By Mr. LYONS.—What is your name?

A. Chief George; that's my name.

Q. Where do you reside? A. Haines.

Q. How long have you lived in Haines?

A. A long time now.

Q. Do you know Solomon Ripinski, the defendant in this action? A. Yes, sir.

Q. How long have you known him?

A. I have known him since he lived over on the Chilkat side; not very long ago when he moved over to Haines Mission.

Q. Did you know Sarah Dickinson in her lifetime, the mother of Billy Dickinson? A. Yes, sir.

Q. How long did you know her?

A. I have known her, but I don't keep track of how long ago I have known her. I have known her since when I am a young man, and now I am an old man.

Q. Did you know her before Ripinski first went to Haines—made his first visit to Haines?

A. Yes, sir.

Q. Do you know of any ground or any store or building she occupied at Haines?

A. I know that she had a store there and a piece of ground from the first time.

(Testimony of Chief George.)

Q. Where did she have that store and ground?

A. Right there where the old Indian trail is, on the front side, the end of the Indian road.

Q. Do you know where Mr. Ripinski lives now in Haines, where he has his store? A. Yes, sir.

Q. Is that the same ground Ripinski occupied before—or the same ground Mrs. Dickinson occupied before Ripinski went to Haines?

A. That's the same ground.

Q. What did Mrs. Dickinson do with the land immediately around her house, around close around her store?

Objected to as immaterial and irrelevant.

A. She sold the house and the ground to Ripinski.

Defendant moves to strike the answer as not responsive to the question.

We don't resist the motion. What improvements did Mrs. Dickinson make around her house, what did she do there?

A. She hired Peter Brown to do some little clearing on her ground for a piece of garden.

Q. Did Peter Brown clear it for her?

A. Yes, sir, he cleared it for her.

Q. How big a piece of ground did he clear for her—how large?

Objected to as immaterial and irrelevant.

A. You know where the store is, and a log house, and on the back side of the house, not very far from the house.

Q. Did the clearing Peter Brown did for her extend westerly and up the hill from the store and house as far as the U. S. Postoffice is now?

(Testimony of Chief George.)

A. The postoffice you people are talking about is where Mrs. Dickinson's ground didn't run that far; it run up below the postoffice.

Q. Did you ever have a conversation with Mrs. Dickinson concerning the amount of land she owned or claimed in Haines? A. No, sir.

Q. Did Mrs. Dickinson have cleared any other land in Haines excepting the tract you have just described?

Objected to as immaterial and irrelevant.

A. No, sir, I only knew that piece of ground she had around her house.

By Mr. JENNINGS.—I would like the record to show that this man Chief George is an Indian, and all of the witnesses the plaintiffs have called and examined since the witness Peter Brown and including the witness Peter Brown, are Indians.

[Testimony of Isaac Dennis, for the Plaintiffs.]

ISAAC DENNIS, a native, being called on behalf of the plaintiffs and first duly sworn through said interpreter, testified as follows on

Direct Examination.

By Mr. LYONS.—What's your name?

A. Isaac Dennis.

Q. Where do you live? A. Mission.

Q. Haines Mission? A. Yes, sir.

Q. How long have you lived there?

A. I have lived there all the time; that is my place.

(Testimony of Isaac Dennis.)

Q. Do you know Solomon Ripinski, the defendant in this case? A. Yes, sir.

Q. How long have you known him?

A. I have known him a long time.

Q. Did you know Sarah Dickinson in her lifetime? A. I knew her.

Q. Do you know what property or what land she owned in Haines? A. Yes, sir.

Q. Where did she occupy any property in Haines?

A. There was a trail through from Chilkat side right through that bushes to where Haines Mission is now; there was a trail there by people, and this side of the trail that's the place where Mrs. Dickinson stops; that's her house there and ground.

Q. Do you know where Sol. Ripinski has a store and lives now in Haines? A. Yes, sir.

Q. Is that the same ground that Mrs. Dickinson owned and cleared in Haines? A. Yes, sir.

Q. What improvements did Mrs. Dickinson make on her ground at Haines?

Objected to as immaterial and irrelevant.

A. She put a garden around her house.

Q. Did she clear any land up as far as the postoffice—as far westerly as the postoffice is now?

Objected to as incompetent, irrelevant and immaterial.

A. No, sir, she cleared a piece of ground below the postoffice.

Q. How large a piece of ground did she clear?

(Testimony of Anna Jackson.)

A. I never knew I would be put on the witness-stand about that piece of ground, so I don't look over it to tell how large that ground is; that's all I say, that that ground was below the postoffice.

Q. Did Mrs. Dickinson ever improve or clear any other part of the ground on which the town of Haines is now located?

Objected to as immaterial and irrelevant.

A. No, sir.

[Testimony of Anna Jackson, for the Plaintiffs.]

ANNA JACKSON, a native, being first duly sworn, testified on behalf of the plaintiffs as follows, on

Direct Examination.

By Mr. LYONS.—Where do you reside, Mrs. Jackson? A. Haines Mission.

Q. How long have you resided there?

A. Not a very long time ago.

Q. Did you know Mrs. Sarah Dickinson in her lifetime? A. Yes, sir, I know her.

Q. Do you know where she lived and had a store in Haines? A. Yes, sir.

Q. Where was it with reference to the beach—or where was it with reference to where the U. S. Post-office is now, nearer the beach than where the post-office is?

A. Her ground runs up below the postoffice.

Q. Did she own the same ground that Mr. Ripinski now owns and lives on in Haines?

A. Yes, sir.

(Testimony of Anna Jackson.)

Q. Did you ever have any conversation with Mrs. Dickinson as to the boundaries of her land or as to how much land she claimed there?

Objected to as immaterial, irrelevant, indefinite and not binding on the defendant.

A. Yes, she had a little talk with me about her ground.

Q. When and where did you have that conversation with Mrs. Dickinson?

A. Over on the Chilkat side.

Q. Ask her when that conversation was had?

A. After she sold her property.

Q. After she sold her property to whom?

A. To Ripinski.

Q. Now, state what that conversation was?

Objected to as immaterial, irrelevant, not binding on the defendant, and being a declaration of Mrs. Dickinson after a conveyance to Mr. Ripinski.

A. She says when I came from Sitka and I was with her at that time, and she began to talk to me about her place, her property. She told me she had sold her property to Ripinski.

Q. Did she describe the property or say how much she sold?

Objected to as immaterial, irrelevant and not binding on the defendant.

A. She says that she described that she got a hundred dollars for her place.

Q. Did she give any description of the boundaries of that property she sold?

(Testimony of Anna Jackson.)

Objected to as immaterial, irrelevant, and not binding on the defendant Ripinski.

A. This is the way she talked to me when we was talking about her place—

Q. I asked, did the woman Mrs. Dickinson tell her how much land she sold to Ripinski, or describe it to her in any way?

Objected to for the same reason as above.

A. Yes, she told me she sold her garden around her house; there was some stumps and bushes piled right in line like a fence around her ground there; that's the place she sold to Ripinski.

Cross-examination.

By Mr. JENNINGS.—Did she say that was all she sold to Ripinski—just the garden? (Question withdrawn.) Did she say she had sold her property to Ripinski, or her garden to Ripinski?

A. Yes, sir, she told me she had sold her house and piece of garden, the house and the ground around the house.

Q. Did she say her property or her garden—ask her that question again?

A. She says she sold her house and garden, and fruit and everything that was in the garden, the house and the ground and the garden.

Q. All her property, everything she had over there?

A. She used to have two houses there, one—

Q. No, but did Mrs. Dickinson tell her she had sold to Ripinski everything she had over there, all the land?

(Testimony of J. W. Burnham.)

A. She didn't have any more property besides her house and—

Q. No, never mind what this witness says she had—but did Mrs. Dickinson tell her she sold to Sol. everything she had over there?

A. Yes, sir, she told me she sold her house and her ground.

Q. And all she had? A. Yes, sir.

[**Testimony of J. W. Burnham, for the Plaintiffs.**]

J. W. BURNHAM, a witness called on behalf of the plaintiffs, being first duly sworn, testified as follows on

Direct Examination.

By Mr. LYONS.—Mr. Burnham, where do you reside?

A. Well, between Rainy Hollow, Skagway and Haines.

Q. How long have you resided in this section?

A. Since the spring of 1898.

Q. Did you ever know one Sarah Dickinson, of Haines?

A. I knew Mrs. Dickinson; I don't know whether her name was Sarah or not.

Q. Do you know whether or not she is the same woman that conveyed some property in Haines to Ripinski? A. I know.

Q. Was she the same woman?

A. Yes, sir, the same woman.

Q. Did you ever have any conversation with her with reference to what property she sold to Ripinski? A. I did.

(Testimony of J. W. Burnham.)

Q. When did you have that conversation, Mr. Burnham?

A. Just previous to the first time this contest came up, she told me she was going—

Defendant objects, if he is going on now to state what Mrs. Dickinson said.

—I'm just trying to fix the date. She told me she had to go to Juneau.

Q. Was that in 1898?

A. I don't know; don't think I would state it was in '98.

Q. You saw her in Haines, did you?

A. No, at Chilkat, at her cabin.

Q. Now, what did she say with reference to where the premises lay that she conveyed to Ripinski?

By Mr. JENNINGS.—I would like to ask a few preliminary questions. This conversation that Mr. Lyons has asked you about was after she had sold the property to Ripinski?

A. I suppose it was; yes.

Q. That is, after the sale?

A. Just previous to the time there was some kind of a suit down there at Juneau, and she was getting ready to go to Juneau.

Q. You knew she was getting ready to go; so it must have been near that time? A. Yes, sir.

Q. And it was after she sold to Ripinski?

A. I suppose it was, because we were talking about what property she had sold; I didn't know anything about it, just happened into her cabin and

(Testimony of J. W. Burnham.)

she spoke about it—she may have been just selling it.

Q. Wasn't it after—weren't you talking to her about what property she had sold? Or was it what she was going to sell?

A. What had been sold, I supposed.

Q. Don't you know you were talking about something that had already happened?

A. Well, there was a contest and I supposed it had been sold; yes.

Q. Then you say it had been sold?

A. I suppose so.

Objected to as immaterial, irrelevant and incompetent and not binding on Mr. Ripinski, the defendant, at all because it occurred after the transfer of the premises to Ripinski.

By Mr. LYONS.—Go ahead, and state the circumstances, Mr. Burnham.

A. I was spending the winter at Chilkat, killing time, waiting for spring to open up, and I was in the habit of taking a walk and I used to drop in and write letters for her occasionally. So I dropped in there just before this contest they were having and during the conversation she says: "I have got to go to Juneau right away." I says: "What for?" "Oh," she says, "there is some trouble over the land I sold to Sol. Ripinski." Of course, I didn't know anything about any land she had sold at that time. Well, we got to talking about it and I asked her what she sold, and what all the trouble was about. "Oh, about the land I sold him," she says. "Well,"

(Testimony of J. W. Burnham.)

I says, "what did you sell him?" She says: "Some land I used to own down there at Haines," and then she told me it ran down to the beach, and she said—started in by saying: "My husband came here to run this store for the Northwest Trading Company, and as there was no Indians at that time I didn't pay anything and they gave it up; and my husband then claimed the building and continued to run the store in his own name for himself." And she says: "After while the Indians commenced to come there again and settle," and camped on her land down on the beach and they commenced to build cabins and they kept building on her husband's place and he was glad to have them come there for their trade. So they kept on building until they got nearly to the store and one day there was a fellow getting ready to build close to the store and her husband went out and told him if they kept on building around there they would have all of his land and he shouldn't build there. I afterwards got to talking with her about it and where her land laid, and she says, "It ran right around there where my garden is." During the conversation she said she had a little child die and she buried it up back of her house there but not on her land. She further told me: "My husband was going to take up some more land so that if anything happened to him I would have something to leave to my children, and he went below and died before he did it."

(Testimony of J. W. Martin.)

Cross-examination.

By Mr. JENNINGS.—She said that her garden—pointed right around the house, I suppose, to the garden and fence and said that was the land her husband claimed?

A. Yes, sir, it was somewhere near where the hotel is now.

[**Testimony of J. W. Martin, for the Plaintiffs.**]

J. W. MARTIN, a witness called on behalf of the plaintiffs, being first duly sworn testified on

Direct Examination.

By Mr. LYONS.—You're a resident of Haines, Mr. Martin? A. Yes, sir.

Q. You are one of the plaintiffs in this action?

A. Yes, sir.

Q. You know Solomon Ripinski, the defendant?

A. Yes, sir.

Q. How long have you resided in Haines?

A. Since 1897.

Q. What time in the year 1897 did you go there?

A. The spring and summer of '97, April or May.

Q. Well, now, was it 1897 or 1898?

A. Well, I think it was 1897 or 1898—I think it was 1897, though.

Q. Was it before the influx of people to Skagway and the "rush" to Dawson?

A. It was during that time.

Q. Do you know where the United States Post-office is in the town of Haines? A. Yes, sir.

Q. I now call your attention to Plaintiff's Ex-

(Testimony of J. W. Martin.)

hibit No. 1, which is a plat showing the exterior boundaries of the alleged homestead of the defendant in this action, with the exterior boundary lines thereof shaded in yellow. The tract marked "Ripinski Homestead" is conceded to be the place where Mr. Ripinski now has his store, and a shaded space indicating a building on the southeast corner of Block No. 1 is conceded to be the Morrison house. Now, where is the U. S. Postoffice with reference to the Morrison Hotel?

A. It is between the Morrison Hotel and the bay.

Q. Then it is easterly of the Morrison Hotel?

A. Yes, sir.

Q. Do you own any land within the disputed premises in this action? A. Yes, sir.

Q. What do you own Mr. Martin?

A. This lot marked here—

Q. How is it marked?

A. It is shaded there, similar to the Morrison Hotel.

Q. Parcel No. 6, is it? A. Yes, sir.

Q. In Block No. 1? A. Yes, sir.

Q. Do you own any other parcel of land on the disputed tract?

A. Yes, sir, this parcel here marked twenty-five, I believe.

Q. No, it is marked No. 9, is it not?

A. Oh, yes, sir, I see it is.

Q. Who owns the parcel in Block 1 marked No. 7?

(Testimony of J. W. Martin.)

Objected to as immaterial, irrelevant and not the proper way to prove ownership.

A. Mr. Mahan, I believe.

Q. Who occupies it? A. Mr. Mahan.

Q. How did you acquire possession of parcel No. 6? A. I bought it from Mr. Lane.

Q. When?

A. I can't say exactly, but about 1901, I think.

Q. Have you done any improving on that lot since you purchased it? A. Yes, sir.

Q. What improvements have you put on it?

A. I put up a building there, 25x60

Q. What was the approximate cost of that building? A. The one on Parcel No. 6?

Q. Yes, what was the approximate cost of that building? A. About three thousand dollars.

Q. Did Mr. Ripinski, the defendant in this action, ever make any protest against your improving that lot?

Objected to as irrelevant and immaterial.

A. Not, that I have any recollection of.

Q. He lived in Haines during all of that time, did he? A. Yes, sir.

Q. And knew you were constructing that building? A. Yes, sir.

Q. And never claimed the premises on which your building is now constructed? A. No, sir.

Q. Do you own any other lots in Haines?

A. Not excepting those two.

Q. You owned both of those lots at the date of the commencement of this action, did you?

(Testimony of J. W. Martin.)

A. What do you call the date of the action?

Q. July 2d, 1906? A. Yes, sir.

Q. And you still own them?

A. Yes, sir; now, I hadn't finished—you were speaking about improvements; I also have a house on the other Parcel No. 9, a dwelling-house on there.

Q. When did you construct that?

A. Just recently, within the last sixty or ninety days.

Q. You are familiar with the town of Haines are you not, Mr. Martin? A. Yes, sir.

Q. What portion of the town of Haines, both residential and business, is included and embraced within the exterior boundaries of the alleged homestead of the defendant?

Objected to as immaterial and irrelevant.

A. That includes this whole strip here?

Q. Yes, sir.

A. Well, I would say it includes everything of value at the present time.

Q. In the town of Haines. Now, are you able to give an estimate of the expenditures that have been made in clearing and improving and building all of the structures—are you able to give an estimate of the expenditures necessitated by the clearing of the land, leveling it off, and constructing all of the buildings that are situate now on this tract?

Objected to as immaterial and irrelevant.

A. Yes, sir.

Q. What would you say it was approximately?

(Testimony of J. W. Martin.)

A. Well, I should say between seventy-five and a hundred thousand dollars.

Q. You are familiar with the streets laid out in the town of Haines are you, Mr. Martin?

A. Yes, sir.

Q. You are familiar with what is styled on this Exhibit No. 1 as Main Street? A. Yes, sir.

Q. Is that street used by the people of the town of Haines as a public thoroughfare?

Objected to as immaterial and irrelevant.

A. Yes, sir.

Q. Both by pedestrians and by teams?

A. Yes, sir, it is the main thoroughfare of the town—has been ever since the town has been a town.

Q. What can you say about Second Avenue?

Same objection.

A. Well, it is the same; it is one of the main thoroughfares of the town.

Q. And used by the public of the town of Haines as a thoroughfare?

Same objection.

A. Yes, sir.

Q. How about Third Avenue?

A. Well, it isn't used so much as the other two.

Q. Is it used at all by the people of the town of Haines as a thoroughfare?

Same objection.

A. Yes, sir.

Q. How about Fourth Avenue?

A. It is opened, and used as a thoroughfare.

(Testimony of J. W. Martin.)

Same objection, and move to strike on the same ground.

Q. How about Fifth Avenue?

A. I'm not able to say whether it is open or not.

Q. How about Sixth Avenue?

Same objection.

A. The avenue is laid out—I can't say whether it is used a great deal or not.

Q. The settlement of Haines—is the settlement of Haines laid out as a town?

Objected to as immaterial and irrelevant.

A. Yes, sir, this plat here is a very good representation of it.

Q. That is, Plaintiffs' Exhibit No. 1 is a good representation of the town of Haines, or the contested portion of it, is it? A. Yes, sir.

Q. How long have you known the defendant Solomon Ripinski?

A. Ever since 1897 or 1898.

Q. He has been a resident of Haines, has he?

A. Yes, sir, Haines and Chilkat.

Q. Has been doing business in Haines?

A. Yes, sir.

Q. And he never, during all that time made any protest against your improving the lots you now own, or made any claim to the land on which these structures of your are located?

A. Well, he objected at the time I put up this store building here 30x60 on Parcel No. 6 you have it marked; he objected to me running over on his

(Testimony of J. W. Martin.)

ground—just let me show you what I mean by that; you see Ripinski claims this lot here—

Q. Not Parcel No. 6?

A. Parcel No. 5, by purchase.

Q. Parcel No. 5 in Block No. 1?

A. Yes, sir, and he put a claim that my building was running onto his lot in here—

Q. That is, that it was overlapping on his own parcel marked “Sol. Ripinski”—parcel No. 6?

A. Yes, sir, that’s the objection he raised.

Q. And that’s the only protest he ever made?

A. That’s the only one I recall.

Q. He didn’t pretend to claim Parcel No. 6, the land you occupied? A. No, sir.

Cross-examination.

By Mr. JENNINGS.—Mr. Martin, is your memory pretty good?

A. At times—I think so.

Q. And you want to state now, sir, that Sol. Ripinski never did protest to you against putting up any building or improvement on any of that land, except the little protest he made about your building on Lot No. 6 and overlapping the land claimed by him—do you mean to say he never made any protest to you except the protest on account of the house you were building on Parcel 6, Block 1, lapping over on to this piece marked Sol. Ripinski?

A. Not to my recollection.

Q. You’re sure of that?

A. I didn’t say I was sure—I said not to my recollection.

(Testimony of J. W. Martin.)

Q. Well, you would have recollected it if it had ever happened, wouldn't you?

A. I might and I might not.

Q. Then you don't know whether your recollection about that matter is very good or not?

A. I don't think that he did.

Q. If you're mistaken about that—if your recollection about that point isn't reliable, it is liable to be bad about the other things you have testified to in this case, isn't it? A. Not necessarily.

Q. I say it is liable to be—not necessarily—but liable to be, isn't it?

A. Well, I will repeat the answer I made before.

Q. Did you do any building there in the year 1903?

A. I don't know exactly what year I put up that building I speak of there—between 1901 and 1903.

Q. Did you—do you mean to say you put up those buildings there in total ignorance of any claims of Sol. Ripinski?

A. I knew he laid claim to it; he claims the whole country there for miles around, the land and the whole works.

Q. For miles around—you're honest in that answer, are you?

A. Yes, sir, as I have heard; he claims a mountain up there five miles away and has gone so far as to name it after himself.

Q. He named it after himself?

A. I believe so.

Q. The people around there call it Mt. Ripinski?

(Testimony of J. W. Martin.)

A. I believe so.

Q. You call it that, don't you? A. No, sir.

Q. What do you call it?

A. I have never called it anything.

Q. So you have some feeling in this matter, haven't you, Mr. Martin, against Ripinski?

A. Well, very little.

Q. So little, in fact, that you don't want to designate a mountain, or belittle a mountain with his name; is that true?

A. Yes, sir, that's the fact of the case.

Q. No; you wouldn't even let Sol. Ripinski have the credit of naming that mountain after himself, would you?

A. I haven't tried to take the credit away from him.

Q. But you're not going to join in with the rest of the people and call it Mt. Ripinski, are you?

A. Not yet, no.

Q. Simply, because it is Ripinski; you haven't any objection to the name, have you—your objection is to the man that bears the name, isn't it?

A. I'm not particularly stuck on the name, either. I think the name would suit better in Russia than in America.

Q. You think it would? A. Yes, sir.

Q. How would you like to call it Mount Weitzman?

Objected to as immaterial and not cross-examination.

Q. Or Mount Martin?

(Testimony of J. W. Martin.)

Objected to as immaterial and not cross-examination.

Q. Mount Martin, I suppose, would suit you. Now, Mr. Martin, I hand you a registered letter receipt marked Haines, Alaska—first I'll have that marked for identification Defendant's Exhibit No. 5. (So marked.) I now call your attention to the signature on that register return receipt "J. W. Martin," and ask you if that is your signature.

A. Yes, sir.

Q. Just look at the other side of it. Now, I'll ask you if you didn't receive a registered letter containing a notice, of which this is a copy—this paper I now ask the stenographer to mark Defendant's Exhibit No. 6 (so marked) the original, of which that is a copy? A. Yes, sir.

Q. And if that registry receipt I just handed you wasn't the receipt for that letter?

A. I presume it was—I think so. And I would like to ask you what piece of ground that covers—that notice to stop building?

Q. I'm not on the witness-stand, Mr. Martin—I asked you, sir, if you ever received any protest from Sol. Ripinski about building on these lots and setting up his claim to them and you said you hadn't—I'll ask you now if that don't refresh your memory a little, these two exhibits I just handed you?

A. I remember the exhibits.

Q. Then it does refresh you memory?

A. Yes, sir.

Q. You did receive such a notice from him?

(Testimony of J. W. Martin.)

A. Yes, sir.

Q. Now, Mr. Martin, when did you go to Haines?

A. In 1897 or '98.

Q. Which was it, 1897 or 1898?

A. You decide for yourself; I have told you.

Q. No, you decide—which was it?

A. It was in 1897 or 1898; that's as near as I can tell you.

Q. Was it before or after Mr. Fay came there?

A. It was after.

Q. What did you do when you first went to Haines?

A. Went to work for Kohler & James.

Q. Whereabouts? A. Chilkat.

Q. I asked you what did you first do when you went to Haines, not Chilkat?

A. I think I started a store there, me and Fay.

Q. You and Fay were partners, weren't you?

A. Yes, sir.

Q. Whereabouts in Haines did you start a store?

A. On this parcel marked No. 4, on Exhibit No. 1.

Q. Were you with Mr. Fay when you got onto the Dalton tract of land and Dalton made you move, and you then moved onto parcel No. 4?

Objected to as immaterial and irrelevant and not proper cross-examination.

A. I don't know anything about any moving; we never moved after we started up there.

Q. Didn't you pitch a tent or start a store on Dalton's acre and then move up farther?

A. No, sir.

(Testimony of J. W. Martin.)

Q. That's not true? A. No, sir; I did not.

Q. Well, did you and Mr. Fay go there together?

A. To Haines together?

Q. Yes.

A. I run the store and he was in the store at Chilkat.

Q. You run the store at Haines in partnership with Mr. Fay? A. Yes, sir.

Q. And weren't you working for Kohler & James at the time? A. No, sir.

Q. What kind of a store did you have—a house or a tent? A. We had a house.

Q. How long was that after Mr. Fay went there first? A. Well, I don't know exactly.

Q. Give us your best estimate?

A. I don't know just how long Fay had been there before I came to the country.

Q. Did you buy a half interest in that lot with Mr. Fay? A. No, sir.

Q. It was Mr. Fay's lot? A. Yes, sir.

Q. He put that in the partnership and you conducted the partnership business on Fay's individual lot, did you? A. Yes, sir.

Q. And you can't locate the time, how long that was after Fay located the lot—can't fix it in your mind?

A. I don't know, because I don't know when he located the lot; Fay owned the lot before I came to the country.

Q. Don't you know what year you came to the country in, whether it was in 1897 or 1898?

(Testimony of J. W. Martin.)

A. It was 1897 or 1898.

Q. You can't fix it any closer than that—the year you came to Alaska? A. No, sir.

Q. When did you build the house you claim to own now on Parcel No. 6, Block 1?

A. Between 1901 and 1903.

Q. You knew at the time you built it that Sol. Ripinski claimed that land, didn't you?

A. Why, I guess probably I did.

Q. When did you build the other house on lot, on Parcel 9, in Block 1?

A. That was built this summer.

Q. Built it just this last summer?

A. Yes, sir.

Q. The summer of 1907? A. Yes, sir.

Q. After you had received this registered letter we just introduced in evidence or had the stenographer identify?

A. The date of your letter ought to answer that.

Q. So you won't answer that question in any other way than by telling me that the letter will answer?

Objected to on the ground that the letter is the best evidence.

By Mr. JENNINGS.—I asked him whether it was before or after he received that letter that he began to build.

By Mr. LYONS.—And he has answered when he did the building, and the letter will indicate as to when it was received.

(Testimony of J. W. Martin.)

By Mr. JENNINGS.—Did you build that house before or after you received this letter?

A. I have answered you.

Q. You won't answer it any further—is that it?

A. I don't think it's necessary.

Q. You know, don't you, that you're not the judge of what is necessary in this case? Do you refuse to answer the question?

A. Let's hear it again.

Q. Did you build that house before or after you received this letter? A. It was after.

Q. Now, Mr. Martin, you haven't built a house at Haines without knowledge of Sol. Ripinski's claim to that land, have you?

A. Which claim do you refer to?

Q. I refer to Mr. Ripinski's claim of ownership to that land as having bought the same from Mrs. Dickinson?

A. Well, the only knowledge I have ever had of his claim was the claim he himself put forth; I never had any other evidence of it.

Q. You knew it was disputed property, didn't you, when you put your house there? A. Yes.

Q. You're a merchant there at Haines?

A. Yes.

Q. You and Witzman and Fay are the three leading merchants at Haines, aren't you, the "old-timers," the three oldest merchants there, in point of time? A. There is others there.

Q. Well, you're about the three oldest in point of time, aren't you, Mr. Martin?

(Testimony of J. W. Martin.)

A. Yes, I guess we are.

Q. And how much loss to you in dollars and cents would it mean if Sol. Ripinski should win this lawsuit?

A. It won't cost me very much, because I don't figure he will ever win it during my lifetime.

Q. Well, that's quite funny—it excites the risibles of the rest of your company here, but it don't answer the question.

A. Well, I will add a little to that.

Q. Answer the question?

A. Well, fire ahead.

Q. How much does it represent to you as an investment, your property, there at Haines?

A. Oh, probably twelve or fifteen thousand dollars.

Redirect Examination.

By Mr. LYONS.—In estimating your damage, you include your business as well as the real estate do you, Mr. Martin? A. Yes, sir.

Q. Referring to this notice you received from Mr. Jennings, did that describe any parcel of ground whatever? A. No, sir.

Q. It wasn't signed by Mr. Ripinski, was it?

A. Not that I remember of.

Q. Do you know whether it was signed by anybody that you yourself knew had any authority to act for Mr. Ripinski and sign his name in that behalf?

A. No, I think not; it was signed by Jennings.

(Testimony of J. W. Martin.)

Q. Mr. Ripinski lived right there during all of the time you were residing there, and did business right there in Haines during all the time you were building? A. Yes, sir.

Q. And he took the method of notifying you by sending a message through the mails by his alleged attorney and without describing any premises whatever? A. Yes, sir.

Q. By merely telling you not to build any structures in the town of Haines? A. Yes, sir.

Recross-examination.

By Mr. JENNINGS.—You were building at the time you got that letter, weren't you?

A. I don't remember.

[Testimony of Tim Creeden, for the Plaintiffs.]

TIM CREEDEN, a witness called on behalf of the plaintiffs, being first duly sworn, testified on

Direct Examination.

By Mr. LYONS.—Mr. Creeden, you reside in Haines? A. Yes, sir; I reside there now.

Q. How long have you resided in Haines?

A. Off and on since 1895.

Q. Do you know Solomon Ripinski?

A. Yes, sir.

Q. How long have you known him?

A. Since '95.

Q. Where did you first get acquainted with him?

A. Chilkat.

Q. Did you know him when he first came to Haines? A. Yes, sir.

(Testimony of Tim Creeden.)

Q. Now, are you familiar, or were you familiar with the property owned in Haines by one Sarah Dickinson? A. Why, yes; I think so.

Q. Prior to the time Mr. Ripinski made his advent to Haines? A. Yes.

Q. You're familiar with the premises now occupied by Mr. Ripinski at Haines, are you not?

A. Yes, sir.

Q. How large a tract of ground was occupied or cleared by Mrs. Dickinson?

Objected to as immaterial and irrelevant.

A. Oh, I should judge about an acre of ground; I'm no surveyor, and I didn't go clear around it.

Q. How far did it extend westerly from the beach with reference to the present location of the Morrison Hotel?

Objected to as immaterial and irrelevant.

A. I thought it extended up to the Morrison Hotel—around there somewhere.

Q. What can you say as to whether or not it is practically coincident with the premises now occupied by Mr. Ripinski?

Objected to as leading.

Q. Question withdrawn. You're familiar with the premises now occupied by Ripinski—

A. Yes, sir.

Q. In Haines? A. Yes, sir.

Q. Where were the premises situated that Mrs. Dickinson occupied, with reference to the premises now occupied by Ripinski?

(Testimony of Tim Creeden.)

Objected to as immaterial, irrelevant, and misleading, confusing, and using terms to the witness without explaining what they mean.

A. The same place.

Q. How much clearing, if you know, was done by Mrs. Dickinson? A. Something like an acre.

Q. You say you went there first in 1895, to Haines? A. Yes, sir.

Q. You know the condition, the physical condition of the country, or the ground rather, on which is now situated the town of Haines? What its physical condition was, as to whether or not it was timbered or cleared?

Objected to as immaterial and irrelevant.

A. It was timbered.

Q. Was there any indication of clearing or improvement of the ground west of the tract that was occupied by Mrs. Dickinson at that time?

A. No, sir; no improvements; it was all timbered.

Q. Virgin forest, was it? A. Yes, sir.

Q. Do you know when Solomon first arrived in Haines?

A. I believe it was about the spring of '98 he came to Haines.

Q. He immediately began in business there, did he?

A. Why, yes, he began business in the spring of 1898, some time, I think it was.

Q. And do you know whether or not he purchased any ground from Mrs. Dickinson?

(Testimony of Tim Creeden.)

A. I understood he purchased some ground in the fall of 1897 from Mrs. Dickinson.

Q. Since that date, has Mr. Ripinski ever cleared or improved or in any way subjected to his will any property or land in Haines other than the tract that was owned by Mrs. Dickinson?

Objected to as immaterial and irrelevant.

A. No, sir; he never did any improving that I know of.

Q. When did you first acquire any land in the town of Haines, if at all?

A. In the winter of 1897, sir.

Q. Where, Mr. Creeden?

A. Well, in part of the townsite of Haines at the present time.

Q. I call your attention now to Plaintiffs' Exhibit No. 1, and also to that particular portion which is enclosed with a line shaded in yellow which is conceded to be the tract in controversy, in this suit. And I ask you if you are familiar with the premises represented on that map?

A. I am familiar with the ground, but I haven't seen many maps—I have never seen a map of the townsite.

Q. I will call your attention to the southeast corner here, which is Mr. Morrison's Hotel—are you familiar with Main Street along there?

A. Yes, sir.

Q. Familiar with Second Avenue?

A. Yes, sir.

Q. With Third Avenue? A. Yes, sir.

(Testimony of Tim Creeden.)

Q. With Fourth Avenue? A. Yes, sir.

Q. With Fifth Avenue? A. Yes, sir.

Q. With Sixth Avenue? A. Yes, sir.

Q. Is the settlement of Haines platted as a town-site?

Objected to as immaterial and irrelevant to any issue in this case.

A. That's the way I understand it; yes.

Q. The streets and avenues that are indicated on this plat are used by the people of Haines, are they—

A. Yes, sir.

Objected to as immaterial and irrelevant.

Q. —are used by the people of Haines as public thoroughfares, are they? A. Yes, sir.

Q. Mr. Ripinski or anybody else have never sought to subject any of those thoroughfares to his will? A. No, sir.

Objected to as immaterial and irrelevant and leading.

Q. What premises do you occupy now, Mr. Creeden, in the town of Haines?

A. I occupy part of Lot 7 in Block 1—this is Block 1, and is Lot 7, isn't it?

Q. No, that's Lot No. 1.

A. Well, Morrison's Hotel is back here, this one?

Q. That is a lot marked on this map Parcel 17 in Block 1? A. Well, we call it Lot seven.

Q. You see it marked on this plat No. 17?

A. Yes, sir.

Q. Who owns that lot?

A. Me and Mr. De Haven.

(Testimony of Tim Creeden.)

Q. How long have you owned it?

A. Since February, 1899, sir.

Q. Do you know the size of that lot?

A. Yes, sir.

Q. Is it correctly indicated on this plat—fifty by—do you know what the size of those lots are?

A. Yes, sir; these lots are fifty by a hundred and forty.

Q. Is that the length of all the regular lots of Haines? A. Yes, sir.

Q. And fifty feet in width?

A. Fifty feet wide, yes, sir; and I also own some ground out here.

Q. Where? A. In this Block No. 6.

Q. What lot in Block No. 6?

A. Lots one and two.

Q. How long have you owned them?

A. Well, I took them up first in 1897.

Q. They are marked on this map, Lot No. 1 is marked Joe Stubbler, isn't it? A. Yes.

Q. And No. 2 is marked A. J. Dennerline?

A. Yes, sir.

Q. How does it come they are marked that way?

A. I have had a house there, and it burned down some four or five years ago, and they have taken them up since; I claimed them, and now I have purchased them from them.

Q. And you actually own those two lots now?

A. Yes, sir.

Q. What improvements have you made on them?

A. I have built two houses on them.

(Testimony of Tim Creeden.)

Q. When? A. This spring.

Q. You had a house on them years ago, you say?

A. Yes, sir.

Q. On which one was that?

A. On Lot No. 1.

Q. Have you ever had them under fence?

A. Yes, sir; partly fenced in the front.

Q. They are correctly indicated on this map as being fifty by a hundred and forty feet, are they?

A. Yes, sir; that is, I think they are.

Q. You will notice it gives the length of the lot within the disputed tract, not outside of it?

A. Oh, I thought all of these lots were in the disputed tract; I didn't know.

Q. But they are 140 feet long, are they?

A. Yes, sir.

Q. And all of the regular lots of Haines are a hundred and forty feet long?

A. That's what I understand they measure, 140 feet.

Q. Did you ever have any conversation with Ripinski about your property in the town of Haines?

A. Not as I remember, sir.

Q. Did he ever make any protest against you building on your lots there?

A. I believe he did, in 1899.

Q. What was his protest then?

A. He claimed it to be on his ground—I didn't happen to be there, my partner was on the ground.

Q. Which lot was that?

A. Lot No. 17 in Block 1.

(Testimony of Tim Creeden.)

Q. Did he ever make any protest to you or claim to you that the lot was his? A. No, sir.

Q. Did he ever question your rights to improve the other lots you say you repurchased?

A. No, sir.

Q. You have improved those two lots, since you repurchased them? A. Yes, sir.

Q. He never laid any claim to the premises?

A. No, sir.

Q. Did you ever have any conversation with Mrs. Dickinson as to what premises she owned in the settlement of Haines or at Haines Mission?

A. No, sir.

Q. You say that the premises she in any way improved or cleared are the same premises now conceded by the people of Haines to be the premises of Solomon Ripinski?

A. That was all improved by her.

Q. She never improved any other portion of the town of Haines? A. No, sir.

Q. Were there any fences around that property when you first went there? A. No, sir.

Q. You were there in 1895? A. Yes, sir.

Q. Were you there frequently after 1895?

A. I was there in '96 and '97.

Q. Were you in the room when one Carl testified for the defendant in this case?

A. No, sir; I wasn't here.

Q. When you went there in 1895, was there any fence along Main Street or along the trail which led

(Testimony of Tim Creeden.)

from Haines or from the beach at Haines in a westerly direction towards Chilkat? A. No, sir.

Q. There was no wire fence there? A. No.

Q. You were over that trail frequently, were you from Chilkat to Haines? A. Yes, sir.

Q. And you're sure there was no wire fence along there? A. I know there was not.

Q. Are you acquainted with Mr. Carl?

A. Yes, sir.

Q. You didn't hear his testimony to-day?

A. No, sir.

Q. How frequently were you in Haines between the years 1895 and 1897—those two dates?

A. Well, I have been over there in '95 several times, and also in 1905 every day for a couple of months.

Q. You said you first went there in 1895?

A. Yes, sir.

Q. Well, how often were you there between 1895 and 1897 when the defendant came there—when Ripinski came there?

A. I have been there every year.

Q. How often every year—how often would you be there?

A. For a couple of months in the year there.

Q. Right there at Haines? A. Yes, sir.

Q. Camped there? A. Yes, sir.

Q. During the summer months?

A. Yes, sir; I camped there in '95, I think, for five or six weeks, and in 1906 I camped there about three months, and in 1907—

(Testimony of Tim Creeden.)

Q. I'm speaking about the nineties, not after 1900—I'm speaking about 1895, 1896 and 1897, you were there during those three summers?

A. Part of the time, not all summer.

Q. Were you frequently over this ground, that is, on which the townsite of Haines is located?

A. Yes, sir.

Q. Were you frequently over the trail that is now called Main Street of the town of Haines?

A. Yes, sir.

Q. What do you say as to whether or not there were any fences in that vicinity anywhere?

A. There was a little bit of fence on the beach where the Lindsay Hotel is now, but it was knocked down; it run up to pretty near Morrison's Hotel where there was a garden at one time—hasn't been any garden there for several years.

Q. That was the extent of the fence?

A. Yes, sir.

Q. Now, the Lindsay Hotel is westerly from the Morrison Hotel, is it?

A. No, it is east, down the beach near the wharf.

Q. And you say there was a fence extending from the place where the Lindsay Hotel is now situated up to the Morrison Hotel?

A. Yes, sir.

Q. Did it extend on Main Street any farther than the Morrison Hotel?

A. No, sir.

Q. Did you ever meet Mr. Carl around Haines during the years of 1895 and 1896?

A. Yes, I met him in 1906 and 1907.

Q. I am talking about 1895 and 1896.

(Testimony of Tim Creeden.)

A. Well, I mean 1896—

Q. And in 1895? A. Yes, sir.

Cross-examination.

By Mr. JENNINGS.—Mr. Creeden, you say in 1895 and '96 and '97 you were around there quite often and there was no fence except the little fence you have testified about? A. That was all.

Q. Extended from the Lindsay Hotel to about the Morrison Hotel?

A. Yes, sir, and that had fallen down.

Q. Well, now, where did you go in 1897; when—what time in 1895 did you leave Haines?

A. I left Haines in 1897 the 20th of June.

Q. When did you come back?

A. I went back in December, 1897.

Q. Well, then, where did you go?

A. I came here to Skagway, and put part of the time in here.

Q. How much time did you put in here?

A. About two or three months.

Q. Then, in the winter of 1897 you left Haines, didn't you? A. Yes.

Q. And you came to Skagway? A. Yes.

Q. And didn't return to Haines for two or three months afterwards?

A. No, two months; stayed in Skagway about two months.

Q. And prior to the time you left Haines in the winter of 1897 there was no fence of any kind on this tract except the fence you have mentioned?

A. Yes, sir.

(Testimony of Tim Creeden.)

Q. And you swear to that? A. I do, sir.

Q. And you had plenty of opportunity to see it if it had been on that tract? A. Yes, sir.

Q. And you swear there was no other fence there? A. I do, sir.

Q. There wasn't any fence built by the Mission people or anybody else at Haines, was there?

A. I don't say fence by the Mission people, but not on this ground here.

Q. Not where the trail was there?

A. On one side of the trail was the Mission fence.

Q. Then there was a fence there?

A. There was the Mission fence, yes, sir.

Q. There was a fence inclosing, running right up this trail, wasn't there?

A. There was on one side of it; yes, sir.

Q. What kind of a fence was that?

A. Well, it was wire strung along part way—

Q. How far out the trail from the beach did it go—up the trail did it extend?

A. I don't know just how far it did go.

Q. Did it go up as far as the old sawmill?

A. Somewhere around there, I believe.

Q. How many wires on that fence, do you know?

A. I don't know; no.

Q. Mr. Creeden, when you went to build a house you say on Lot 7 now marked Lot No. 17, Sol. Ripinski complained to you that you were on his ground?

(Testimony of Tim Creeden.)

A. I understand so—I wasn't there at the time; my partner said he claimed that.

Q. He complained to your partner then?

A. Yes, sir.

Q. Who was he? A. Mr. De Haven.

Redirect Examination.

By Mr. LYONS.—You say there was a fence there built by the Mission people? A. There was.

Q. On the southerly side of Main Street?

A. Yes, sir.

Q. Was that built there before Mr. Ripinski came to Haines or afterwards?

A. I don't know when Ripinski first came there—it was built before 1895.

Q. Did you ever hear anyone claim in that vicinity that Sol. Ripinski built that fence?

A. No, sir.

Q. Did you ever hear anyone say, Ripinski or anybody else, that he owned that fence?

A. No, sir, the Mission ground owned it—he don't claim it himself, that fence.

Q. Did you ever have any conversation with Mrs. Sarah Dickinson with reference to the tract of land she owned? What she claimed there at Haines?

A. No, sir.

Recross-examination.

By Mr. JENNINGS.—I understand now, Mr. Creeden, that you left Haines in the winter of 1897 and never returned until the spring of 1898, did you?

A. I left there in the winter of 1897 and stayed about two months in Skagway.

(Testimony of G. C. De Haven.)

Q. And never returned until the first part of the spring or last part of the winter of 1898?

A. No, sir.

Q. You don't know what happened in Haines during that time?

A. No, I was away about two months.

[**Testimony of G. C. De Haven, for the Plaintiffs.**]

G. C. De HAVEN, a witness called on behalf of the plaintiffs, and being first duly sworn, testified on

Direct Examination.

By Mr. LYONS.—Mr. De Haven, where do you reside? A. In Haines.

Q. When did you first go to Haines?

A. In the spring of 1898.

Q. Do you know Solomon Ripinski?

A. I do.

Q. Have you resided in Haines all the time since you went there?

A. Well, every winter since that; in the summer time I have been up in the Porcupine mining district.

Q. I call your attention to Plaintiffs' Exhibit No. 1 which is a map and plat of the disputed portion of the town of Haines, and I'll ask you if you are familiar with the town of Haines as represented by that plat? A. Yes, sir, I think so.

Q. Do you own any property in Haines?

A. I own half a lot in Block 1, Lot No. 7—Mr. Creeden and I own it.

Q. Is this the lot?

A. This is the one right here.

(Testimony of G. C. De Haven.)

Q. Marked Parcel 17 in Block 1 on Plaintiffs' Exhibit No. 1—when did you first take possession of that tract?

A. We put up a house in the spring of 1899, along about the first of February.

Q. Was Solomon Ripinski there then?

A. He was in Haines I believe; I don't know.

Q. Did you ever have any conversation with him with reference to that tract of land?

A. No, sir.

Q. Did he ever make any protest against you building there?

A. Not himself; there was other parties that came there and claimed he owned it.

Q. Who were the other parties if you know?

A. Old man Grygla claimed so—he was sent there from Washington to decide that thing he said and we better get off there and stay off.

Q. But Mr. Ripinski never made any protest to you himself?

A. He never said anything to me at all.

Q. And he has been living in the vicinity of your ground, abutting on your ground, for the past seven or eight years?

A. Yes, he lived just below us about three hundred feet.

Q. He could have seen you from his premises when you were constructing your building?

A. There was woods between us then.

Q. Is there woods there now?

(Testimony of G. C. De Haven.)

A. There is brush as high as this ceiling grewed up.

Q. Has he ever laid any claim to that tract to you, Ripinski himself?

A. I don't remember of him saying a word to me himself individually.

Q. What other parcel of land do you own in Haines?

A. Nothing in the disputed tract.

Q. You say you went to Haines in—

A. The spring of 1898.

Q. What was the physical condition of this disputed tract at that time as to whether or not it was cleared or timbered?

A. It wasn't cleared at all.

Q. Covered with timber, was it?

A. Yes, sir.

Q. Some people had moved on there and taken up lots at that time, had they?

A. Yes, sir, Mr. Spooner was there, and Fay and Vogel—that's the only ones when I first went there.

Q. What portion of the town of Haines, both residential and business, is included within the disputed tract?

Objected to as immaterial and irrelevant.

A. Well, it is principally all included in that tract that amounts to anything—that is, the business part of the town is all in that.

Q. How much expenditure have you made on the lot which you and Mr. Creeden own?

Objected to as immaterial and irrelevant.

(Testimony of G. C. De Haven.)

A. What—

Q. That is now, the cost of clearing and also the cost of the construction of that building?

A. Oh, five or six hundred dollars.

Q. Are you able to give an estimate of the approximate expenditures necessitated in the clearing and grading of this disputed tract, and the construction of the buildings that are now situated thereon?

Objected to as immaterial and irrelevant.

A. Well, I should think a hundred and twenty-five thousand dollars would be a fair estimate.

Q. You and Mr. Creeden own that lot now?

A. Yes, sir.

Q. And have owned it at all times since 1898 and occupied it?

A. Yes, sir, lived there continuously every winter since then.

Cross-examination.

By Mr. JENNINGS.—What is your name?

A. Cal De Haven.

Q. Cal De Haven or Carl Wilson?

A. De Haven, sir.

Q. Aren't you called Carl Wilson also?

A. Yes, sir.

Q. Yes, sir, you have got an alias, haven't you?

A. No, sir; that's merely a nickname, that's all.

Q. You and Tim Creeden are partners?

A. We are in that lot, yes.

Q. What's your occupation?

A. I have been mining in the Porcupine until

(Testimony of G. C. De Haven.)

last year I had a Government wood contract, Mr. Hinchman and I.

Q. You and Hinchman were partners?

A. Were in that contract, yes, sir; since that time I have been working on my own hook.

Q. Are you a married man, Mr. Wilson?

A. Yes, sir—De Haven, if you please, sir.

Q. Very well, if you prefer—isn't it a fact, sir, that when you built that house you jumped that lot, and you knew you were jumping it, and not only Mr. Grygla went out there and told you to stop but that Sol. Ripinski and his brother went out there and told you also?

A. I don't remember Mr. Ripinski coming up there at all.

Q. Are you willing to swear that he didn't come up there and protest to you about jumping that lot?

A. I don't remember him coming up there at all.

Q. Do you remember his brother coming up there? A. No, I believe Brie came up there.

Q. Who is Brie?

A. He is a saloon-keeper there.

Q. A kinsman of Ripinski's, isn't he?

A. I believe so.

Q. Well, then, Brie came up and—

A. Yes, sir, and Mrs. Brie too—

Q. And she is a kinsman of Ripinski, lives right next to him?

A. I think so—I don't know anything about them being kinsmen.

(Testimony of G. C. De Haven.)

Q. It is generally understood in that community they are? A. Yes, I believe so.

Q. And you knew when they came there and told you that Sol. Ripinski claimed that lot, it wasn't some interloper?

A. I considered they were up there running kind of a "whizzer" on me, was the way I looked at it.

Q. And you knew it came from Sol. Ripinski too, didn't you? A. Yes, certainly I did.

Q. And you say Sol. Ripinski himself never came up there?

A. I don't remember him coming on the premises at all.

Q. Do you swear he didn't?

A. Oh, no, I won't swear he didn't, but I certainly don't remember of him.

Q. You remember his brother coming up there, don't you? A. I don't remember him, either.

Q. Called Mr. Ripin, don't you remember him coming and telling you?

A. I don't remember of him coming up there at all, sir.

Q. You won't say he didn't?

A. I won't swear he didn't.

Q. He might have come up there and protested to you that was Sol.'s land?

A. I don't remember of him coming there at all.

Q. I want to know, will you swear he didn't come up there and tell you that was Sol.'s land?

A. I won't swear he didn't because I wasn't there all the time.

(Testimony of G. C. De Haven.)

Q. I mean when you were there?

A. I don't remember of it.

Q. Will you swear he did not? Answer that yes or no.

A. I swear I don't remember if he did.

Q. I mean come to you and protest to you—you, personally?

A. No, he never came to me at all.

Q. Then you swear he didn't come and tell you that?

A. I don't swear anything about it; I say I don't remember.

Q. If he ever came up there and protested to you, you would remember it, wouldn't you?

A. I think so.

Q. And now, will you swear he didn't come and protest to you?

A. I won't swear anything about it, because I don't remember of it.

[Testimony of Carl Bjornstad, for the Plaintiffs.]

CARL BJORNSTAD, a witness called on behalf of the plaintiffs and first duly sworn, testified on

Direct Examination.

By Mr. LYONS.—You're one of the plaintiffs in this action, are you not? A. Yes, sir.

Q. You reside in Haines? A. I do.

Q. How long have you lived there?

A. Since 1899.

Q. Are you acquainted with Solomon Ripinski, the defendant in this case? A. I am.

(Testimony of Carl Bjornstad.)

Q. Do you own any ground on the disputed tract in this case, at Haines?

A. I have, but not now.

Q. You don't own any now? A. No.

Q. To whom did you convey your interest?

A. To Holgate and Hinchman.

Q. What ground did you convey—did you own any ground within the disputed tract at the date of the commencement of this action, July 2d, 1906?

A. Yes, sir.

Q. What ground did you own there—can you point it out on Plaintiffs' Exhibit No. 1?

A. That there, Parcel 6 in Block 3.

Q. You say you sold that to whom?

A. Mr. Morris, Frank Morris.

Q. Does he own it now? A. Yes, sir.

Q. When did you convey it to him?

A. A short time ago.

Q. You owned it at the date of the commencement of this action? A. Yes, sir.

Q. Had you any improvements on it at that date?

A. No, I had not.

Q. Had you fenced it? A. No, sir.

Q. Are there any improvements on it now?

A. It is cleared now, and a ditch dug on it.

Q. I call your attention to Parcels 12, 13 and 14 in Block 2 marked "Karen Bjornstad"—is that your mother? A. Yes, sir.

Q. That parcel down there belongs to your mother?

A. Yes, sir, and also Parcel 5 in Block 3.

(Testimony of Carl Bjornstad.)

Q. She owns those four parcels still, does she?

A. Yes, sir.

Q. Did she own them at the time of the commencement of this action? A. Yes, sir.

Q. Are you her agent in taking care of them?

A. Yes, sir.

Q. What size are those lots?

A. Fifty by a hundred and forty.

Q. Is that the regular size of all the lots in the disputed tract? A. It is as far as I know.

Q. What improvements were made by yourself or your mother on those four parcels or tracts?

A. Why we bought it from Mrs. Cambell, it is one house on it.

Q. Describe so the stenographer can get it in the record now, where that house was.

A. It was on the first lot, Lot No. 7, the house was.

Q. It is marked No. 14 on this plat?

A. Yes, sir; and the three lots were all in one and it was cultivated as a garden.

Q. When did you acquire possession of it, all that tract embraced in those four parcels?

A. In 1902, I think—I have got it here (producing deed)—yes, the 15th day of March, 1902.

Q. Has your mother done any improving of those lots since she acquired possession of them?

A. Yes.

Objected to as immaterial and irrelevant.

Q. What improvements?

(Testimony of Carl Bjornstad.)

A. She built another fence on Lot No. 14 and had the block all fenced off.

Q. The three lots in Block No. 2?

A. Yes, sir.

Q. Did she build any structures there?

A. That one house there, and built a house on the other lot.

Q. That is, on Lot 5 in Block 3?

A. Yes, sir.

Q. When did she build that?

A. She built that in 1899, she bought it at that time.

Q. And she owns those four lots at the present time? A. Yes, sir.

Q. And has fenced them and improved them?

A. Yes, sir.

Q. Do you know Solomon Ripinski?

A. I do.

Q. How long have you known him?

A. Since 1899.

Q. Your mother is also one of the plaintiffs in this action? A. I expect she is.

Q. Did Mr. Ripinski ever make any protest to you against your building on or improving those lots you have described as belonging to your mother?

A. Not that I know of.

Q. Never made any protest to you?

A. No, sir.

Q. And never made any claim to the land embraced within the exterior boundaries of these four lots you have described as your mother's?

(Testimony of Carl Bjornstad.)

A. No, sir.

Q. Did he ever make any protest against your claim to Lot No. 9 in Block 3, the one you say you sold?

A. No, sir.

Q. You improved that and cleared it, did you?

A. I didn't clear it, no, sir; I bought it from another party and just let it lay there.

Q. You're familiar with the town of Haines are you not, Mr. Bjornstad?

A. Somewhat, yes, sir.

Q. You know the streets and alleys?

A. Yes, sir.

Q. And avenues? A. Yes, sir.

Q. Do you know the thoroughfare on this Plaintiffs' Exhibit No. 1 represented as Main Street?

A. I do.

Q. Is that used as a thoroughfare by the people of the town of Haines? A. It is.

Q. How about Second Avenue?

A. It is also used as a street.

Q. Used by the people of the town of Haines as a thoroughfare? A. Yes, sir.

Q. Is Third Avenue used by the people of the town of Haines as a street and thoroughfare?

A. Yes, sir.

Q. Fourth Avenue?

A. That's used some, too.

Q. By the people of the town of Haines as a thoroughfare? A. Yes, sir.

Q. Fifth Avenue?

A. That's used—

(Testimony of Carl Bjornstad.)

Q. —by the people of the town of Haines as a thoroughfare? A. Yes, sir.

Q. Sixth Avenue?

A. That's used—no obstruction there that I know of.

Q. And that's used by the people of the town of Haines as a thoroughfare? A. Yes, sir.

Q. What is the population of the town of Haines?

Objected to as immaterial and irrelevant.

A. I should think a hundred and fifty to two hundred inhabitants there.

Q. You have reference to white people?

A. Yes, sir.

Q. And what proportion of that hundred and fifty to two hundred white inhabitants reside or do business, carry on any kind of business on this disputed tract?

Objected to as immaterial and irrelevant.

A. The biggest part of the population.

Cross-examination.

By Mr. JENNINGS.—What is your name?

A. My name is Carl Bjornstad.

Q. How do you spell it?

A. B-j-o-r-n-s-t-a-d.

Q. What is your nationality?

A. Norwegian.

Q. How long have you been in this country?

A. Since 1882.

Q. When did you first come to Haines?

A. In 1899.

(Testimony of Carl Bjornstad.)

Q. Did you take up any lots there?

A. No, sir.

Q. Why?

A. I didn't have time to locate—didn't figure on town lots.

Q. What were you figuring on?

A. Mining and prospecting.

Q. How long did you stay around Haines?

A. Have stayed there ever since.

Q. When did you first acquire any property in Haines?

A. I acquired it I expect in about 1903 or about 1902 it was.

Q. Then you were at Haines from 1899 to 1902 without getting hold of any property?

A. Yes, sir; I will take that back; I did get a fraction of a lot from Mr. Campbell but that is outside of this tract.

Q. If you had been there from 1899 on to 1903 without acquiring any land, you must have heard that Ripinski claimed this land?

A. Yes, sir.

Q. It was commonly talked over and known there? A. Yes.

Q. So when you acquired your property there, you knew you were buying it with the claim of Sol. Ripinski on it, didn't you—knew he asserted some claim to the land at the time you bought it?

A. I knew he claimed it, and lost it in court too.

Q. Then you thought his claim wasn't any good?

A. Yes, sir, he lost it in court.

(Testimony of Carl Bjornstad.)

Q. You say you had a garden upon this disputed tract, on these lots? A. Yes, sir.

Q. Pretty good garden? A. Very good.

Q. Good soil up there, isn't it?

A. Very good, yes, sir.

Q. Raise vegetables and things on it readily?

A. Yes, sir.

Q. And there are many gardens there—Mr. Hinchman and others have gardens?

A. Yes, sir.

Q. Who else has a garden there?

A. Mr. Creeden is one.

Q. On this Lot No. 17?

A. No, sir, outside of this strip.

Q. Pretty good land up there generally, isn't it?

A. Well, yes, it is.

Q. That's all.

Redirect Examination.

By Mr. LYONS.—When you say you heard of some alleged claim of Solomon Ripinski, did you have any idea as to the boundaries or extent of his claim?

A. No, I didn't.

Q. He never told you anything about the boundaries of his claim at all—did he?

A. No, I never talked with Ripinski about it at all.

Q. You never saw any fence or posts indicating the boundaries of his claim at Haines there, did you?

A. No, sir.

[**Testimony of E. A. Adams, for the Plaintiffs.**]

E. A. ADAMS, a witness called on behalf of the plaintiffs, being first duly sworn, testified as follows on

Direct Examination.

By Mr. LYONS.—Mr. Adams, where do you reside? A. Haines.

Q. How long have you lived there, sir?

A. I came there in 1898.

Q. What time in 1898?

A. In the spring.

Q. Do you know the defendant Ripinski?

A. Yes, sir.

Q. I call your attention now to Plaintiffs' Exhibit No. 1, which is a map and plat of the parcel of ground in controversy in this case, being a large portion of the town of Haines, and I'll ask you if you're familiar with the ground represented by that map?

A. Yes, sir.

Q. Do you know the premises that are actually occupied by the defendant Ripinski? A. Yes.

Q. Did you know Mrs. Sarah Dickinson in her lifetime? A. I didn't know her; no.

Q. When you went to Haines in the spring of 1898 did you have any occasion to examine the premises now occupied by Mr. Ripinski?

A. No, sir.

Q. What was the physical condition of the land on which is now situate lots or blocks 1, 2, 3, 4, 5 and 6 of the town of Haines, when you went there?

(Testimony of E. A. Adams.)

A. In a wild state.

Q. Unoccupied?

A. Unoccupied; yes, sir.

Q. Were there any people there ahead of you?

A. Yes, sir.

Q. Who, if you can state their names?

A. Well, Tim Vogel, Harry Fay, a man by the name of Spooner—that's all I can recall.

Q. Were there any marks of improvement on any portion of this tract covered by these blocks I have just referred to, except what was done by these men who went there ahead of you and located their lots? A. That's all I seen.

Q. What was the condition of that tract of land as to whether or not it was cleared or timbered?

Objected to as irrelevant and immaterial.

A. It was timbered.

Q. Has it all been cleared since? A. No.

Q. How much of it is still uncleared?

A. The biggest portion of it.

Q. On this tract? A. Yes, sir.

Q. How are blocks numbered, one and two, are they cleared? A. They're pretty well cleared.

Q. And Block No. 3?

A. Well, that's uncleared.

Q. There's a portion of it cleared?

A. Yes, sir, here and there they done a little clearing, stumps and so on here and there.

Q. Are you familiar—you are one of the plaintiffs in this action? A. Yes, sir.

(Testimony of E. A. Adams.)

Q. Are you familiar with the amount of work done in clearing and grading and building on this disputed tract?

A. I wouldn't try to estimate it; I don't know what it cost.

Q. What property do you own there now?

A. It is Lot No. 10 I think, in Block No. 1.

Q. It is marked on this map as No. 12, is it not?

A. Well, it should be No. 10, I think.

Q. Isn't it marked as No. 14?

A. If it is, I think it is wrong.

Q. You think it should be No. 10?

A. Yes, sir.

Q. In Block No. 1? A. Yes, sir.

Q. It is marked E. A. Adams—that's your name, isn't it? A. Yes, sir.

Q. When did you first take possession of that parcel of land?

A. I took it on the 10th day of January, 1899.

Q. Did you locate it or purchase it?

A. I located it.

Q. In locating it how did you locate it, mark the boundaries in any way so they could be seen?

A. Yes, sir, and put a fence around it.

Q. What is the size of that lot, Mr. Adams?

A. I believe they are fifty by a hundred and forty.

Q. That's the regulation size of all the lots in the disputed tract, is it? A. Yes, sir.

Q. Except where they have been cut up or divided, is it? A. Yes, sir.

(Testimony of E. A. Adams.)

Q. Have you owned that property ever since you went there? A. Yes, sir.

Q. When did you build your house there?

A. Right away, as soon as I took it up.

Q. How much of an expenditure have you made on the lot in clearing and building, including labor, material and everything incurred in the necessary expenses of clearing and building?

A. Perhaps four or five hundred dollars.

Q. You say you know the defendant Ripinski?

A. Yes, sir.

Q. Did Mr. Ripinski ever make any protest to you against you building on that lot?

A. He never did.

Q. Did he ever lay any claim to that lot?

A. He never did to me.

Q. He has been in business in Haines right along, hasn't he, during all the time, practically, that you have been there?

A. I don't know, I suppose he has; I ain't down in that part of town very much.

Q. Any way, he never laid any claim to your lot?

A. Never to me.

Q. And never protested against your building there? A. Never.

Cross-examination.

By Mr. JENNINGS.—When did you buy that lot? A. I didn't buy it.

Q. Did you take it up?

A. Yes, sir, located.

Q. When? A. In 1899.

(Testimony of E. A. Adams.)

Q. Are you familiar with the amount of work done in clearing and grading and building on this disputed tract?

A. I wouldn't try to estimate it; I don't know what it cost.

Q. What property do you own there now?

A. It is Lot No. 10 I think, in Block No. 1.

Q. It is marked on this map as No. 12, is it not?

A. Well, it should be No. 10, I think.

Q. Isn't it marked as No. 14?

A. If it is, I think it is wrong.

Q. You think it should be No. 10?

A. Yes, sir.

Q. In Block No. 1? A. Yes, sir.

Q. It is marked E. A. Adams—that's your name, isn't it? A. Yes, sir.

Q. When did you first take possession of that parcel of land?

A. I took it on the 10th day of January, 1899.

Q. Did you locate it or purchase it?

A. I located it.

Q. In locating it how did you locate it, mark the boundaries in any way so they could be seen?

A. Yes, sir, and put a fence around it.

Q. What is the size of that lot, Mr. Adams?

A. I believe they are fifty by a hundred and forty.

Q. That's the regulation size of all the lots in the disputed tract, is it? A. Yes, sir.

Q. Except where they have been cut up or divided, is it? A. Yes, sir.

(Testimony of E. A. Adams.)

Q. Have you owned that property ever since you went there? A. Yes, sir.

Q. When did you build your house there?

A. Right away, as soon as I took it up.

Q. How much of an expenditure have you made on the lot in clearing and building, including labor, material and everything incurred in the necessary expenses of clearing and building?

A. Perhaps four or five hundred dollars.

Q. You say you know the defendant Ripinski?

A. Yes, sir.

Q. Did Mr. Ripinski ever make any protest to you against you building on that lot?

A. He never did.

Q. Did he ever lay any claim to that lot?

A. He never did to me.

Q. He has been in business in Haines right along, hasn't he, during all the time, practically, that you have been there?

A. I don't know, I suppose he has; I ain't down in that part of town very much.

Q. Any way, he never laid any claim to your lot?

A. Never to me.

Q. And never protested against your building there? A. Never.

Cross-examination.

By Mr. JENNINGS.—When did you buy that lot? A. I didn't buy it.

Q. Did you take it up?

A. Yes, sir, located.

Q. When? A. In 1899.

(Testimony of E. A. Adams.)

Q. What part of 1899?

A. Tenth of January.

Q. You knew at that time that Sol. Ripinski claimed that land?

A. I didn't when I took it up; I have taken it and had a house half built before I found out there was any claim on it.

Q. How did you hear about it?

A. Some one told me.

Q. Who? A. I don't know.

Q. That was in January, 1899? A. Yes.

Q. You never heard of the claim of Sol. Ripinski, you say? A. That's the first of it.

Q. How long had you been in Haines at that time?

A. I came there in the spring and worked for Jack Dalton, the spring of 1898, and then I lived in Juneau until about January and then I went to Haines and took up a lot as soon as I got there.

Q. You just came back to Haines and took up the lot? A. Yes, sir, took it up.

Q. And between your house and Ripinski's house, the place where he lives, was a dense forest you say?

A. Yes, sir, it was all brush and timber.

Q. He couldn't see your house from his house, could he? A. I don't think he could.

Q. Couldn't see what was going on there, could he? A. No, sir.

Q. How long did it take you to build that house?

A. Perhaps two weeks.

(Testimony of E. A. Adams.)

Redirect Examination.

By Mr. LYONS.—Mr. Ripinski lived over at Chilkat until when—when did he move over to Haines?

A. I couldn't say.

Q. You say you heard nothing about any alleged claim of Ripinski until you had your house about half constructed?

A. That's the first I knew of it.

Q. Did you hear then anything which was sufficient to apprise you where his alleged or claimed boundaries were? A. No, sir.

Q. Do you know to this day, except as you have seen on this map, where he claims his boundaries are? A. That's all I know about it.

Q. You never saw a post or a stake to indicate any land that he claimed? A. I never did.

Q. You never saw any notice on any premises of his warning people to keep off?

A. I believe I did see his homestead notice on the beach.

Q. That was in the year 1903 wasn't it?

A. Yes, sir.

Q. That's the only notice you ever saw?

A. Yes, sir.

Q. And when that notice was posted, there was quite a respectable looking town at Haines, wasn't there?

Objected to as immaterial and irrelevant.

A. Yes, there was some building going on.

Q. About how many inhabitants would you say, white inhabitants, are there in Haines?

(Testimony of E. A. Adams.)

Objected to as immaterial.

—that is approximately?

A. Oh, it would only be a guess with me—I should say there was seventy-five.

Q. Does that include all the inhabitants, or just those on this disputed tract?

A. Just on the disputed tract.

[**Testimony of W. B. Stout, for the Plaintiffs (Recalled).**]

W. B. STOUT, recalled on behalf of the plaintiffs, testified on

Direct Examination.

By Mr. LYONS.—I believe you stated, Mr. Stout, that you were agent for some of the plaintiffs in this action?

A. I am agent for Butterick Brothers, for Ida Johnson, E. J. Burgher, and I presume for Mrs. Kabler—haven't heard from Mrs. Kabler for a year, I guess.

Q. Now, can you point out on this map the property of Ida Johnson, for whom you are agent?

A. If I could see it, Mr. Lyons, I could.

Q. Your eyes are pretty bad, are they?

A. Yes, they are, worse to-day than common, too.

Q. Have you a glass that would enable you to see it?

A. Well, I will try—now, I don't know who Ida Johnson got her lot from.

Q. What Block is it in?

(Testimony of W. B. Stout.)

A. It is in Block No. 2, and it lays adjoining Mr. Weitzman's lot, lays immediately east of Mr. Weitzman's lot, wherever that is.

Q. Did Mrs. Johnson own that property at the date of the commencement of this action?

A. Yes, sir; that is, I was agent for her at the time.

Q. Does she own it still?

A. So far as I know.

Q. There is house on her lot, is there?

A. There is.

Q. Have you ever collected rents for her?

A. I have.

Q. How about Butterick Brothers?

A. Now, I don't know the lines, Mr. Lyons, of their property.

Q. What block is it in?

Q. Do you know in what block that is?

A. As I understand it, their lines run with the other lines in Block No. 1.

Q. What property in that block do they adjoin?

A. They adjoin some property belonging to—I don't know whether Mr. Weitzman or Mrs. Weitzman's name—it lays on the south of the Weitzman's property and faces on what we call Vogel Avenue.

Q. Marked on this plat as a portion of parcel—

A. I don't know what it is marked on there.

Q. Well, it lies south, you say, of the R. L. Weitzman lot?

A. I presume it is.

Q. Marked D. Butterick on this map,

A. Yes, I presume that's the one.

(Testimony of W. B. Stout.)

Q. Is there a house on that parcel of land?

A. Yes, sir; there is.

Q. Did Butterick own that at the time of the commencement of this suit? A. Yes, sir.

Q. He is one of the plaintiffs in this action?

A. Yes, sir; he is.

Q. And you represent him—you're his agent?

A. I am.

Q. You have collected rent for him?

A. I have.

Q. Is he still owner of that property?

A. So far as I know, unless he sold it within the last month.

Q. He hasn't transferred it to your knowledge?

A. He has not.

Q. Has he revoked your agency?

A. He has not.

Q. Mr. E. J. Burgher, you're agent for him, you say? A. I am.

Q. What block does Mr. Burgher own property in?

A. I think it is in Block No. 3, and I think it is Lot 4, I'm not sure of that.

Q. What property does it adjoin, if you know?

A. It adjoins Bjornstad's property on the east.

Q. And it is marked on this plat No. 4?

A. Well, I think that's right then.

Q. Is there a house on that lot?

A. Yes, a little house on it:

Q. Did Burgher own those premises at the date

(Testimony of W. B. Stout.)

of the commencement of this action and prior thereto? A. Yes, sir.

Q. And he owns it still?

A. As far as I know.

Q. And are you his agent? A. Yes, sir.

Q. And you have collected rents for him?

A. Yes, sir; whenever I have been able to rent it.

Q. And you have the right to exercise ownership and possession of that lot in his behalf?

A. I have.

Q. And you still do so? A. I still do.

Q. Is there any other one of the plaintiffs that you are agent for, Mr. Stout?

A. No, only Mrs. Kabler, that I spoke of before.

Q. Do you represent Mr. Rappolt?

A. No, sir; I think Mr. Bjornstad represents him—that's my understanding.

Cross-examination.

By Mr. JENNINGS.—You're postmaster at Haines, Mr. Stout? A. I am.

Q. Did you ever receive a registered letter addressed to Ida Johnson warning her not to do any more building on that property?

A. I think not.

Q. Well, do you swear you didn't?

A. No, sir; I won't.

Q. You may have?

A. I won't swear that I did or I didn't.

Q. Won't swear anything about it?

A. I will not—only I don't remember of receiving one.

(Testimony of W. B. Stout.)

Q. You're postmaster there at Haines and agent for Ida Johnson?

A. I am; but Ida Johnson was here a year or two herself.

Q. When was Ida Johnson here?

A. Well, she has been gone now for a couple of years; she built the house where she lived—I think she did—and if they served notice on anyone it was probably on her personally.

Q. When did she build that house?

A. I don't remember, Mr. Jennings, just when it was.

Q. Can't you give us any idea at all?

A. Well, perhaps within the last four years she built it.

Q. Didn't she build it in the last three years?

A. She might.

Q. Within the last two years?

A. No, I don't think so.

Q. Don't you know, Mr. Stout, that when she was building that house she received a registered letter, signed by myself as attorney for Sol. Ripinski, warning her not to build on that lot?

A. I would be able to find it if I was at home in the office—we have so many of those things.

Q. It wouldn't be unreasonable for the agent of a person to know that, would it?

A. Not if he received it himself, and made a note of it.

Q. She never told you she received such a letter?

A. And I don't think I ever received it, either.

(Testimony of W. B. Stout.)

Q. Did she ever tell you she did?

A. She never told me anything about it, Mr. Jennings.

Q. Then you don't know whether she had notice that that land was Ripinski's or not?

A. I don't remember; no, sir.

Q. I mean, irrespective of any letter, you don't know whether she, Ida Johnson, knew it was Ripinski's land? A. No, sir.

Q. And you don't know whether E. J. Burgher knew it? A. No, sir.

Q. And you don't know whether Katie Kabler knew it?

A. No, sir; I don't know what they know; I only understand what I know myself, and sometimes I think I don't know that.

Q. You say you have no interest in this litigation at all?

A. No, sir; further than as agent for those parties.

Q. And you have been assisting Mr. Lyons to run down the records for evidence in this case?

A. I have.

Q. And devoting a good deal of time to it?

A. Yes, sir; I have; at the request of the plaintiffs.

Q. At their employment? A. Yes, sir.

Q. They pay you for it? A. I don't know.

Q. Did you ask them for pay for it?

A. I have not; no, sir.

(Testimony of Carl Bjornstad.)

Q. They just asked you to do that, and you turned in and helped them?

A. They asked me to do it—I leave the pay to them.

[**Testimony of Carl Bjornstad, for the Plaintiffs (Recalled).**]

CARL BJORNSTAD, being recalled by the plaintiffs, testified as follows on

Direct Examination.

By Mr. LYONS.—You know Mr. Rappolt, do you, Mr. Bjornstad? A. I do.

Q. Are you acting as his agent in Haines?

A. I am.

Q. What lot does he own in the town of Haines?

A. Why, that one there right next to Karen Bjornstad.

Q. Lot No. 6, in Block 3—is that the only one?

A. The only one I know of.

Q. You are acting as his agent?

A. I am, sir; with reference to that lot, yes, sir.

Q. You're in possession of it? A. Yes, sir.

Q. Is there any building on that lot?

A. There is part of a building—there has been a tent building there, and the tent is off, the frame is there, and there is a fence around it.

Q. Did that property belong to Rappolt at the time of the commencement of this action?

A. Yes, sir.

Q. And you were agent for him at that time?

A. Yes, sir.

(Testimony of Carl Bjornstad.)

Q. And are now? A. I am.

Q. And have been at all times since the beginning of the action? A. No, sir.

Q. Did Mr. Rapinski ever notify you that he claimed that lot? A. No, sir.

Cross-examination.

By Mr. JENNINGS.—Where is Mr. Rappolt?

A. Fairbanks.

Q. How long has he been in Fairbanks?

A. Two years, I guess.

Q. How long has it been since he has been at Haines? A. I guess that is three years.

Q. Been longer than that, hasn't it?

A. Maybe it has, I wouldn't say—quite a while ago.

Q. It has been five years, hasn't it?

A. I couldn't say.

Q. It might have been five years for all you know? A. Quite a while ago; yes, sir.

Q. What is Mr. Rappolt's occupation?

A. He is a baker by trade.

Q. There is an old dismantled bakery on that lot now? A. Yes, sir, there is.

Q. Just the frame-work? A. Yes, sir.

Q. The lot isn't used for anything, and hasn't been for years?

A. Yes, sir, there has been natives living on it.

Q. How much rent does the native pay you?

A. I told the native when he went in there he could pay what he could afford to pay me—

Q. How much did he pay?

(Testimony of Carl Bjornstad.)

A. Never paid me anything.

Q. When did you hear from Mr. Rappolt last?

A. I heard from him quite a while ago, when he first came to Fairbanks.

Q. Two years ago? A. Yes, sir.

Q. That's the last time? A. Yes, sir.

Q. How much rent did you ever collect for that lot? A. I didn't collect any at all.

Q. What have you ever done as agent for Mr. Rappolt in caring for that lot?

A. I put up a fence around it.

Q. How much did that cost you?

A. Only my labor.

Q. Did Mr. Rappolt pay you back at all for that?

A. He hasn't yet; no.

Q. When did you put the fence around that lot?

A. When we lived in the house on the lot alongside of this one.

Q. How long ago was that?

A. I guess it's three or four years ago.

Q. Did you ever demand from Mr. Rappolt any pay for it? A. No, sir.

[**Testimony of S. J. Weitzman, for the Plaintiffs (Recalled).**]

S. J. WEITZMAN, recalled on behalf of the plaintiffs, testified on

Direct Examination.

By Mr. LYONS.—Mr. Weitzman, you know Peter Johnson, one of the plaintiffs in this suit?

A. Yes, sir.

(Testimony of S. J. Weitzman.)

Q. Are you his agent?

Objected to as leading and not the proper way to prove agency.

A. Yes, sir.

Q. What property does he own in Haines?

A. Lots 4, 5, and 6 in Block No. 4.

Q. You say you're his agent for the purpose of taking care of that property?

A. Yes, sir.

Q. Did he own that property at the date of the commencement of this action?

A. Yes, sir.

Q. Does he still own it?

A. Yes, sir.

Q. He was in possession of it at the date of the commencement of the action?

A. Yes, sir.

Q. Have you ever collected any rents for him from the leasing of this property?

A. I have not. He instructed me to build a new building on it and I built it last year and this year.

Q. That is on Lot No. 4 in Block 4?

A. Yes, sir.

Q. Is he the only one of the plaintiffs in this action that you represent as agent?

A. Yes, sir.

Q. You have been in possession of those three lots for him, have you?

A. Yes, sir.

Q. And were in possession of them at the date of the commencement of this action for him as his agent?

A. Yes, sir.

Cross-examination.

By Mr. JENNINGS.—When did you build a house there for Mr. Johnson?

A. This last house, last fall, I think.

(Testimony of S. J. Weitzman.)

Q. Which house is that?

A. On Lot No. 4 there.

Q. That was in the fall of 1906?

A. Yes, sir.

Q. You certainly knew at that time that Ripinski had a claim to this land in dispute?

A. Not excepting that Homestead Claim there.

Q. You never heard Mr. Weitzman of any claim that Sol. Ripinski put or had upon that land up to that time excepting his homestead notice he filed in 1903?

A. Nothing whatever.

Q. Who is Peter Johnson?

A. He is a mining man.

Q. Where is he now? A. Rampart.

Q. How long has he been there?

A. He has been there for the last ten or fifteen years, I suppose, now.

Q. Do you know him? A. Yes, sir.

Q. When did you see him last?

A. Three years ago.

Q. Have you gotten any letters from him?

A. All the time, yes, sir; shipping in goods to him right along.

Q. Got any of those letters with you?

A. No, sir.

Q. You've got absolutely nothing to show that you're agent for Pete Johnson, have you?

A. I have got to show, yes, sir.

Q. Show it then?

A. I haven't got it with me—I have it home.

(Testimony of S. J. Weitzman.)

Q. You say Pete Johnson is the owner of that property now? A. Yes, sir.

Q. You swear to that? A. Yes, sir.

Q. Now, how do you know that, Mr. Weitzman?

A. I'm representing him, sir.

Q. How do you know he hasn't sold that property to his wife or to his daughter?

A. Well, he hasn't notified me then.

Q. Couldn't he sell it to either of them and not notify you? A. No; his wife died last fall.

Q. He might have sold it to his daughter?

A. Well, he didn't notify me then.

Q. That's the only reason you can assign—

A. Yes, sir.

Q. And yet you're willing to get up there on the stand and swear that Pete Johnson owns that property still? A. Yes, sir.

Q. You haven't looked up any records to find out whether he has conveyed it to anybody?

A. He would notify me, I think.

Q. Answer the question. You haven't looked up any records to see whether Pete Johnson has conveyed that property to anyone? A. No.

Q. And yet, sir, you're willing to get on this stand and swear that he still owns it?

A. Yes, sir.

Q. And that's on a par with all the rest of your testimony in this case, isn't it—that's the way you know all the other things you have testified to in this case?

(Testimony of S. J. Weitzman.)

Objected to as not cross-examination, unfair, and improper.

A. Well, I will admit as you say Pete Johnson may be guessing about it—

Q. Answer the question I put to you—Mr. Gillette, repeat the question to the witness, please.

(Question repeated to the witness.)

Counsel for the plaintiffs objects to the question as insulting and improper, not cross-examination, and instructs the witness not to answer the question.

Q. Well, now, your attorney has instructed you—are you going to follow his advice?

A. Sure.

Q. And you refuse to answer on the advice of your attorney? A. I do.

Q. All right, sir, that's satisfactory; that's the very answer I want.

By Mr. LYONS.—Well, you've got it, haven't you, Mr. Jennings?

[**Testimony of J. W. Martin, for the Plaintiffs (Recalled).**]

J. W. MARTIN, recalled on behalf of the plaintiffs, testified as follows on

Direct Examination.

By Mr. LYONS.—Mr. Martin, you're acquainted with M. V. MacIntosh and Mary MacIntosh, who reside in Haines? A. Yes, sir.

Q. Do you know where their lots are on this plat?

A. This one right here marked M. V. MacIntosh.

Q. What is it marked there—the number?

(Testimony of J. W. Martin.)

A. There doesn't seem to be any number on it.

Q. Isn't that marked Lot No. 8?

A. No; that's Mahan's.

Q. It is the corner parcel—the northwest corner parcel of that block? A. Yes, sir.

Q. At the corner of Main Street and Second Avenue? A. Yes.

Q. Was Mr. MacIntosh in possession of those premises at the date of the commencement of this action? A. Yes, sir.

Q. Is he in possession of the premises still?

A. Yes, Mrs. MacIntosh is.

Q. Does she own any other lot within the disputed tract? A. I think not.

Q. Does M. V. MacIntosh own any other parcel on the disputed tract?

A. That's M. V. MacIntosh we have just been talking about.

Q. That one there is Miss MacIntosh, is it?

A. Yes, sir; the other one is Mary V. MacIntosh—this one here.

Q. Lot No. 1 in Block No. 3—was Mary V. MacIntosh in possession of that lot at the date of the commencement of this action? A. Yes, sir.

Q. Is she now? A. Yes, sir.

Q. Are you agent for any of the plaintiffs in this action, Mr. Martin? A. No, sir.

Cross-examination.

By Mr. JENNINGS.—What's the difference between Mary V. MacIntosh and M. V. MacIntosh?

A. Mother and daughter, is all.

(Testimony of J. W. Martin.)

Q. Which is the mother and which is the daughter?

A. M. V. MacIntosh is the mother, Mary V. the daughter.

Redirect Examination.

By Mr. LYONS.—Both of those lots are improved, and have buildings on them, have they?

A. Yes, sir.

Recross-examination.

By Mr. JENNINGS.—That's the wife and daughter of the Presbyterian Missionary at Haines?

A. Yes, sir.

Q. The man that succeeded Mr. Harrison?

A. Mr. Warne.

[Certain Offers in Evidence, etc.]

By Mr. LYONS.—We now offer in evidence the original complaint in Cause No. 868 entitled “In the District Court of the United States for the District of Alaska, Sol. Ripinski, Plaintiff, vs. M. W. Lane, Harry Fay, E. P. Cronen, Sarah Cronen, Tim Vogel, W. W. Warne, Adolph Hochesand, W. A. Bigelow, N. Trubschenck, Tim Cruden, John Doe, Richard Roe, John Doe, Richard Roe, Mary Doe, and Mary Roe whose true names are unknown, defendants,” filed April 5th, 1899, Albert D. Elliot, Clerk.

Objected to as immaterial and irrelevant to any of the issues in this case, and insufficient to constitute an estoppel or res adjudicata for which purpose I suppose it is offered, because the parties plaintiff and defendant in the suit from which the complaint

is offered are not the same, and because the subject matter of that suit is not the same as in this case.

It is now stipulated by and between the respective counsel that the original complaint above offered may be copied by the referee and transcribed into the records of this case—

By Mr. JENNINGS.—Subject to the objection just made.

By Mr. LYONS.—If it is going to be written into the record, you needn't mark it as an exhibit Mr. Gillette. I now offer in evidence the amended answer in the last described entitled cause, filed June 17th, 1899, Albert D. Elliot, Clerk, and ask the Referee to transcribe into the record the original of the same under the above stipulation.

Objected to—that is to the introduction of the paper—on the ground that it is irrelevant and immaterial to any issue in this case, insufficient to constitute an estoppel or plea of *res adjudicata* for the reason that the parties plaintiff and defendant in the suit mentioned are not the parties plaintiff and defendant in the case at bar, and because the subject matter is not the same, and because there is no estoppel or *res adjudicata* plead.

This will be copied into the record in like manner, Mr. Gillette. I now offer in evidence a paper styled a "Verdict," which is found in the papers and files

and in the record of the case last described, which reads as follows:

“Ripinski vs. Lane et al.

We the jury find for the defendants.”

(Signed) JOHN STANLEY, foreman.

Endorsed: No. 868. Sol. Ripinski vs. M. W. Lane et al. Verdict. Filed June 17, 1889. Albert D. Elliot, Clerk.”

Defendant objects to that paper for the reason that it is immaterial and irrelevant to any of the issues in this case, and for the further reason that the suit, case, or action in which said verdict was rendered is not between the same parties plaintiff and defendant as in the case at bar; for the further reason that the issues in the two cases are different, and for the further reason that the verdict is not such a verdict as is authorized by law and is not such a verdict as is required by law and not in accordance with the statute in such cases made and provided; and because an estoppel or res adjudicata are not plead in this case.

I now offer in evidence a judgment in the last above described, numbered and entitled cause, and ask that the Referee transcribe the said judgment with all of its endorsements into the record in this case, and that the same, as well as all the other papers in this last described numbered and entitled action be considered a part of the evidence in this case.

Objected to—defendant objects to the introduction of said papers, for the reason that said judgment is irrelevant and immaterial to any of the is-

sues in this case; for the further reason that if it be intended or offered for the purpose of creating an estoppel or plea of res adjudicata the parties to said suit are not the same as the parties in the case at Bar, and for the further reason that said judgment is nothing more nor less than a judgment of dismissal and does not undertake to adjudge the rights to the property in issue as between the parties to this suit or even as between the parties to the cause No. 868.

(Adjourned until 7:30 P. M. this date.)

The Complaint, Amended Answer, and Judgment last above offered on behalf of the plaintiffs are copied in the record herein, and found on pages 631, 636, and 635 respectively of this Report. The remaining papers in said Cause No. 868 are delivered to the Clerk of the Court at Juneau with the information that plaintiffs' attorney request the same be held at Juneau and considered as evidence in this case.

L. R. GILLETTE,
Referee.

[Stipulation Concerning Certain Evidence, etc.]

And be it further remembered, that this said matter came on for further hearing pursuant to adjournment at the U. S. Courthouse at Skagway, Alaska, on said 8th day of July, 1907, 7:30 o'clock P. M., there being present the same as this morning.

Whereupon, the following stipulation was entered into by and between the respective parties by and through their attorneys, T. R. Lyons, for the plain-

tiffs, and R. W. Jennings, for the defendant, touching the introduction of further testimony:

[Stipulation Concerning Introduction of Additional Evidence, etc.]

By Mr. LYONS.—“It is hereby stipulated and agreed by and between all the parties hereto, by their respective counsel, that the plaintiffs herein may procure from the U. S. Commissioner for the District of Alaska in and for Skagway precinct, abstracts of all the instruments of record in the office of the Skagway recording district touching and affecting in any way their claim of right, title and interest in and to any or all of the premises in controversy in this action, including all location notices, deeds, and other instruments in writing in any way affecting their chain of title to said premises or any portion thereof; that said abstracts of title shall merely contain the name of the party or parties to any of the instruments included or referred to in said abstracts of title, with a description of the property affected thereby; that said abstracts of title shall be certified to by the U. S. Commissioner for the District of Alaska in and for Skagway precinct; that when said abstracts of title are so certified, they may be received in evidence in this action and have the same effect as if all of the instruments referred to in said abstracts of title were fully transcribed by said U. S. Commissioner and certified to by him to be a full, true, and correct copy of the same as they appear of record in his office; and no objection shall be offered to the said abstracts of title, except such objections as might be offered to

the original instruments or certified copies thereof; that said abstracts, so certified by said Commissioner shall be filed with the Referee herein on or before the 28th day of July, 1907, and shall be considered as a part and portion of plaintiffs' case in chief, and no objections shall be offered to them by the defendant on account of their not having been introduced and received in evidence before the defendant offered and put in his testimony herein or any portion thereof; that defendant may have until the 5th day of August, 1907, within which to file written objections to the relevancy and competency of said abstracts of title, but no objection shall be taken or made to said abstracts of title on account of their not having been received in evidence prior to the putting in of any testimony on the part of the defendant, and no objections shall be made or taken to said abstracts of title except such objections as might be made to the original instruments or certified copies thereof from which said abstracts of title shall be taken.

By Mr. JENNINGS.—Provided, however, that this stipulation is not to be construed as permitting the introduction of any deed or instruments, if any such there be, signed or purporting to be signed by the defendant or any person in privity with him. Defendant's counsel insist on the above proviso for the reason that no opportunity is afforded for rebutting such deed or instrument, if any such there be. It is not at all admitted that there is any such deed or instrument.

Plaintiffs rest.

Defense.**[Testimony of G. A. Baldwin, for the Defendant.]**

G. A. BALDWIN, a witness called on behalf of the defendant, and being first duly sworn, testified as follows on

Direct Examination.

By Mr. JENNINGS.—What is your name?

A. Grant A. Baldwin.

Q. What is your business?

A. General merchandise.

Q. Whereabouts? A. At Chilkat.

Q. Chilkat, Alaska? A. Yes, sir.

Q. How far is the place called Chilkat, Alaska, from the place called Haines, Alaska?

A. It is about a mile and a half.

Q. What was your business—when did you first come to Chilkat, Alaska?

A. The last of October or first of September, 1897.

Q. You mean the last of September or first of October?

A. No, the last of August or the first of September.

Q. What was you doing when you first came there?

A. Clerking in Kohler & James' store.

Q. How long did you stay at Chilkat at that time?

A. Till, well, about the first of March.

Q. Of 1898? A. Yes, sir.

(Testimony of G. A. Baldwin.)

Q. While you were there—do you know Harry Fay?
A. Yes, sir.

Q. The gentleman who testified here on the witness-stand?
A. I didn't hear him testify.

Q. You have seen him around the courtroom?

A. Yes, sir.

Q. He is one of the plaintiffs in this case—

A. Yes, sir.

Q. He is a merchant at Haines, I mean—when did he first come to Chilkat, if you know?

A. Well, it was before Christmas—

Q. Some time before Christmas, 1897?

A. Yes.

Q. Do you know what he came up there to do?

A. He came to take charge of the store in my place.

Q. To take charge of Kohler & James' store in your place?
A. Yes, sir.

Q. Do you remember when he did come there, the particular date?

A. No, I couldn't say the date.

Q. Was it before the 15th day of December or after that—the first, or the last half of December?

A. Well, I should judge somewhere around the 15th, it might have been before that—I wouldn't say as to the day.

Q. You say he relieved you?

A. I believe he had a letter to that effect, to relieve me—I was still there, he was to take charge.

Q. You turned the store over to him when he came?
A. I did.

(Testimony of G. A. Baldwin.)

Q. And you think that was about the fifteenth of December? A. Yes, sir.

Q. At the time he came to take charge of the store did he say anything to you about having located any lot over at Haines? A. Yes, sir.

Q. Now, Mr. Baldwin, did you know Mrs. Sarah Dickinson, an Indian woman by the name of Mrs. Dickinson? A. Yes, sir.

Q. I mean did you, at that time—December, 1897?

A. Well, I knew her all the time I was there, yes, sir.

Q. Was she a common, ordinary native, or a woman of intelligence, Mr. Baldwin?

A. Well, I think she was a Simptseanne native.

Q. Yes, but what kind of a woman was she—did she speak English? A. Oh, yes.

Q. Write English? A. Yes, a little.

Q. Read English? A. Yes, sir.

Q. She was a kind of a Missionary among the Indians, wasn't she, Mr. Baldwin?

A. Well, no, I don't think so; she might have had a little influence among them.

Q. Did you know her husband, George Dickinson? A. No, sir.

Q. Did you know Sol. Ripinski at that time?

A. Well, after I had been there a week or so I suppose I got acquainted with him.

Q. Were you ever called in to witness a deed or conveyance from Mrs. Sarah Dickinson to Sol. Ripinski? A. Yes, sir.

(Testimony of G. A. Baldwin.)

Q. What was the deed for—what did you understand it was to convey—what was it about?

A. It was land at Haines.

Q. How much land at Haines?

Objected to as incompetent, irrelevant and immaterial; the deed is the best evidence.

Q. How much land was talked of at the time?

Same objection.

A. At the time I signed the deed I didn't know—it was a plot of land at Haines.

Q. Did you know how much land at Haines is included? A. No, sir.

Q. I now hand the stenographer a paper and ask him to mark it as exhibit—whatever it is—No. 7, Cause No. 547. Now, I hand you the paper the stenographer has marked Defendant's Exhibit No. 7 for Identification, and I call your attention to the witnesses whose names appear there, F. A. Rogers and G. A. Baldwin, and I ask you if that's your signature—G. A. Baldwin? A. Yes, sir, it is.

Q. That's the deed you witnessed, is it?

A. Yes, sir.

Q. I now offer that deed in evidence—you saw Mrs. Dickinson sign that deed, did you?

A. Yes, sir, I did.

Q. I now offer that deed in evidence.

Plaintiffs object to the offer for the reason that the description contained in the deed is indefinite, and no person could ascertain from the instrument itself what land is sought to be conveyed by it; and for the

(Testimony of G. A. Baldwin.)

further reason that the deed or paper offered purports to have been acknowledged—

By Mr. LYONS.—Just a moment; I will ask the witness a question.

Q. Do you know whose signature that is?

A. Yes, sir.

Q. Whose is it? A. Sol. Ripinski's.

Q. This deed then was acknowledged before him?

A. Yes; he was the notary at the time.

The offer is objected to, second, for the reason that it purports, the deed purports to have been acknowledged before the grantee therein, Sol. Ripinski; and (3) for the reason that it appears from the deed that it was filed for record December 15th, 1897, and recorded in Book 1 of Deeds at page 31, by John U. Smith, U. S. Commissioner at Dyea, and at that time the Dyea Commissioner's office wasn't a legal recording office and the only place a deed or any other instrument could be recorded and give notice to the world of any conveyance of property at Haines would be at Juneau, Alaska; for the further reason (4) that the instrument bears evidence upon its face that it was recorded in the Recorder's office at Juneau, on the 28th day of January, 1899, a date long subsequent to the location of nearly all of the premises in dispute and a date long subsequent to the time the tract in dispute in this case had been located by different occupants who are plaintiffs in this case and their grantors; and for the further reason (5), that there is nothing to show that Mrs. Dickinson, the grantor in the deed, owned any land at Haines which she

(Testimony of G. A. Baldwin.)

could convey on the date thereof, the evidence so far in the case showing that Mrs. Dickinson owned only a small portion of the ground at Haines now in controversy, to wit, that portion which is conceded to be the premises that Sol. Ripinski now occupies and is not in controversy in this action.

By Mr. JENNINGS.—Mr. Baldwin, at the time you witnessed this deed you have just testified to, was Harry Fay in Chilkat? A. No, sir.

Q. Did you ever have any conversation with Harry Fay in which you stated to him or said anything to lead him to believe that this deed wasn't made at the time you witnessed it or that this signature wasn't signed on there at the time you witnessed it?

A. I don't get the drift of your question.

Q. Mr. Fay testified here that this was a bogus deed, trumped up afterwards, and you were sent there to witness it, and that he was there at the time you were sent there to witness it—is that true or not true?

A. I don't know what time he is referring to; that's the deed I signed about the 2d of December.

Q. And Harry Fay wasn't there at all?

A. Not at that time, no, sir.

Q. Mr. Baldwin, did you see the money paid over at that time? A. I saw some money; yes.

Q. At the time the deed was signed?

A. I saw some money pass from Ripinski to Mrs. Dickinson; I got some of it—I don't know just how much it was. (I understood it was for the land.)
Stricken.

(Testimony of G. A. Baldwin.)

Plaintiffs move to strike the answer as not responsive to the question; the witness is not to state his understanding, but to state the facts.

Q. Now, you say at that time that Mrs. Dickinson didn't say anything about it being sixteen acres?

A. No, sir, I didn't.

Q. Did she say how much land it was?

A. No, sir.

Q. Did she at any time afterwards tell you how much land she sold to Ripinski under this deed?

Objected to on the ground that the deed is the best evidence as to what it conveys, and after the grantor had passed her alleged interest she could not by any subsequent declaration increase, alter or modify the deed so as to make it include any other premises than what she described in the deed.

A. Yes, sir, she said she sold sixteen acres, less one acre she sold to Mr. Dalton.

Q. Sixteen acres?

A. She said she owned originally sixteen acres.

Q. And has sold to Ripinski the sixteen acres, less one acre she had sold to Mrs. Dalton?

Same objection as last above.

A. Yes, sir.

Q. How many times do you suppose you have heard her state that?

Same objection.

A. I don't know.

Q. Well, more than once?

A. Well, I wouldn't say as to that; I might have heard her repeat it several times—I heard it once I know of.

(Testimony of G. A. Baldwin.)

Q. You're certain of that?

A. Yes, sir; and after that she might have spoken about it.

Q. I now call your attention to a plat introduced in evidence here and called Plaintiffs' Exhibit No. 1, and I call your attention to that line here just north of the line called the "Mission"; I'll ask you now, and state to you that it is practically conceded in this case that the old trail run along what is shown on this plat as Main Street, was included in Main Street somewhere—not exactly synonymous with Main Street, but the old trail run along there; now I will ask you if you have ever seen any fence along that old trail?

A. Yes, sir.

Q. On which side of the old trail, the south or the north side of it?

A. There was a rail fence from the corner of the Mission ground as far as the Mission ground was cleared off.

Q. You mean the corner nearest the beach?

A. Not quite to the bench; yes, sir.

Q. There is a big rock down there, isn't there?

A. Yes, sir, right near where Blankenburg's store is.

Q. And that's about opposite—

A. Lindsay's.

Q. That is, it is opposite a point about midway between Morrison's Hotel and the beach, isn't it—Blankenburg's?

A. No, it is on the other side of the street.

(Testimony of G. A. Baldwin.)

Q. I say opposite the point, about midway between Morrison's Hotel and the beach?

A. Yes, sir.

Q. Now, you saw a rail fence running from that point up to—

A. Well, it would be to about where Tim Vogel's saloon is.

Q. A rail fence, on the south side of the trail?

A. Yes, sir.

Q. Did you ever see any fence on the north side of the old trail now?

A. There was just a trail—there was a wire—

Q. As you indicate, the thing crossed right there?

A. Yes, sir.

Q. The little rail fence stopped about there?

A. I think it did, and then turned to the south.

Q. And then on the other side, the north side of the trail, there was something of a wire fence, you say?

A. There was a wire put across the trail right at the corner.

Q. Did that wire then turn any?

A. Yes, sir.

Q. Did it run then to the west or east?

A. To the west.

Q. And then you never saw it any more?

A. No, sir.

Q. You don't know where it went then?

A. No, sir; I don't know whether it run five feet or five thousand.

Q. How far back did you see that—that is, when this deed was executed? Was that before or after the deed was executed?

(Testimony of G. A. Baldwin.)

A. Yes, sir, after; I was never in Haines before the deed was executed.

Q. And pretty soon after that you saw this fence?

A. Yes, sir, I was driving a team through there and took down the wire to get through.

Q. When you first saw Haines, the first time you went over there was after the deed was executed?

A. Yes, sir.

Q. Who was on the ground at the time—who did you see there?

A. Well, I think Spooner had a hotel there, and I don't know whether Mr. Martin had his store there or not.

Q. Did Mr. Fay have a store there then?

A. Well, it was Fay and Martin.

Q. How long after the deed was executed was it you were over there the first time?

A. Well, I don't know as to that.

Q. How did Fay come to have a store there if he had been sent up to relieve you keeping store at Chilkat?

A. Well, they just started one—that's all I know.

Q. Do you know where Fay—was he doing business in a tent at Haines or did he have a store then?

A. I think they had a tent until they finished the log cabin.

Q. Do you remember where that tent was when you saw it?

A. I wouldn't say whether it was alongside or behind the log cabin now.

Q. How far was it from Spooner's hotel?

(Testimony of G. A. Baldwin.)

A. Probably a hundred and fifty feet.

Q. To the west or the east?

A. I get the directions mixed up—let's see, it was to the west, I think.

Q. You're not sure whether you saw Fay there himself?

A. No, he didn't stay there.

Q. Are you sure whether you saw Martin there?

A. Yes, sir.

Q. That is, you're sure you saw Martin there?

A. Yes, sir, I did.

Q. Outside of those two persons, Spooner and Martin, did you see anybody else at Haines?

A. Well, there was quite a few strangers around there then; the Humbert Expedition was there; that is, they weren't right at Haines, they were out about three miles.

Q. Do you know whether Spooner came up with the Humbert Expedition?

A. I believe he did.

Q. It was so reported, was it?

A. Yes, sir, he was a bookkeeper or something for them.

Q. Spooner had a hotel there—do you know whether or not that was on the Dalton acre?

A. I believe it was so conceded.

Plaintiffs move to strike the answer as to what was conceded as incompetent, irrelevant and immaterial—we're not asking for concessions but facts.

Q. I'll ask you if it was so understood at the time by people you talked with?

Objected to as calling for a conclusion of the wit-

(Testimony of G. A. Baldwin.)

ness as to his understanding about what people thought.

A. Mr. Dalton said it was on his acre, and Mr. Spooner paid him for it.

Plaintiffs move to strike the answer because it is hearsay, and the record is the best evidence of what Mr. Dalton conveyed.

Q. Whereabouts was Spencer's hotel—about how far from where Lindsay's hotel is now?

A. Well, I should say three hundred feet—250 or 300 feet.

Q. Do you know where Morrison's hotel is now?

A. Yes, sir.

Q. How far from the place where Morrison's hotel is now was that Spooner hotel?

A. I think part of his hotel at the present time is the old Spooner hotel.

Q. It was right about there, anyhow, was it not?

A. Yes, sir—same place.

Cross-examination.

By Mr. LYONS.—Mr. Baldwin, you say you came to Chilkat in the latter part of September, 1897?

A. No, sir.

Q. When? A. The fore part.

Q. And you remained in Chilkat until 1898?

A. Well, I think it was about the 15th of March I started inside—something like that; I wouldn't say the date exactly.

Q. And you say Mr. Fay came up there to relieve you? A. Yes, sir.

(Testimony of G. A. Baldwin.)

Q. And you don't remember the date in September?
A. It wasn't in September.

Q. Well, you don't remember the exact date in December?
A. No, sir.

Q. Do you remember about the date?

A. Well, I wouldn't commit myself, but I have always thought it was sometime before Christmas.

Q. Well, might it have been in the fore part of December?

A. Well, I don't think it could have been before the tenth.

Q. Have you any particular data that would enable you to locate the exact date at this time?

A. Well, I suppose the old Kohler & James books would locate it exactly.

Q. You haven't made any examination of them to ascertain?
A. No, sir.

Q. You witnessed this deed that has been offered in evidence, did you, Mr. Baldwin?

A. Yes, sir, I did.

Q. When did you witness that deed?

A. Well, the deed says the second of September—I suppose that must have been the date.

Q. The second of September?

A. Of December.

Q. You say you guess that must have been the date—you're depending on the date in the deed for your recollection of that fact, aren't you?

A. Yes, for the very day of the year.

Q. If I should have met you a year ago and asked you when you signed a deed as a witness executed by

(Testimony of G. A. Baldwin.)

Mrs. Dickinson to Ripinski, it would have been a mere guess on your part if you guessed the second day of December, wouldn't it?

A. If you asked me, yes, sir—if you asked me a year after that it might have been a guess; I must have knew it was signed the second day of December.

Q. Why did you know that, Mr. Baldwin?

A. That's pretty hard to say.

Q. You stated in response to a question I asked a moment ago that you were relying on this instrument, and an examination of it to apprise you of the fact it was executed by you on the second of December—what has caused you now to change your mind about that answer?

A. I don't think I have changed my mind.

Q. Then your testimony is, Mr. Baldwin, at this time is, if the deed hadn't been exhibited to you, or somebody hadn't told you the deed was dated the second of December, 1897, you wouldn't have known so as to swear to it as a fact, what date the instrument bore, could you?

Objected to as not cross-examination, and unfair to the witness.

A. Not within ten days, I don't think I could.

Q. Then it might have been, so far as you know, that the instrument was signed by you some other day than the day it is dated—isn't that true?

Objected to—

A. No, sir, I don't think so.

Q. The deed wasn't dated in your presence, was it?
A. No, sir, it was not.

(Testimony of G. A. Baldwin.)

Q. It was already made out before you were asked to witness the signature, wasn't it? A. Yes, sir.

Q. In whose handwriting is that deed?

A. Sol. Ripinski's, I think—I haven't noticed particularly.

Q. In Sol. Ripinski's handwriting?

A. I haven't looked at it; just let me see it.

Q. You have examined it many times before this?

A. Yes, sir, I have.

Q. Why do you ask me to exhibit it to you then?

A. I just wanted to see it.

Q. Now, Mr. Baldwin, you say it is necessary for you to make a re-examination of that instrument in order to ascertain who wrote it? A. Yes, sir.

Q. Don't you think, Mr. Baldwin, that the character of the writing on the instrument would have made a much greater impression on your memory than the immaterial fact of the date?

Objected to as immaterial and argumentative.

A. Well, I didn't care who wrote the deed; I read it before I signed it—I usually read anything before I sign it.

Q. When you're called in—are you accustomed to signing very many deeds? A. Not very many.

Q. You don't think it's the duty of a witness to read the deed when he is merely asked to witness a signature?

Objected to as immaterial and argumentative.

A. It is always best to know what you're signing.

Q. As long as you indicate on there your signature, that's a protection to you, isn't it?

(Testimony of G. A. Baldwin.)

Objected to as immaterial and argumentative.

A. As you say, that might have been put on afterwards.

Q. You don't know, then, whether the words "In the presence of" were on that instrument at the time you signed it?

A. Yes, sir, I do.

Q. Why do you say, then, it might have been put on afterwards?

A. I say in some cases it might have been.

Q. Now, Mr. Baldwin, you did state however, that you didn't have any independent recollection of the particular day on which this instrument was executed by you as a witness?

A. Yes, sir.

Q. It might have been, as a matter of fact, ten days before the second day of December?

A. No, I don't think it was that far.

Q. You said just a moment ago that it might have been?

A. I said five days either way, five days before or five days after.

Q. Why couldn't it have been ten days before or after?

A. Because I was only left in charge of the store myself just about ten days.

Q. You had charge of that store but ten days?

A. Just about.

Q. When did you begin work in that store?

A. There was a gentleman by the name of Mike Martin—

(Testimony of G. A. Baldwin.)

Q. Never mind Martin; I want to know when you took charge? A. The last of November.

Q. What day? A. I couldn't say.

Q. The 25th—as late as the 25th?

A. Yes, as late as the 25th; yes, sir.

Q. And when did you relinquish charge of the store? A. As soon as Fay came there.

Q. Well, when was that?

A. I don't know what day he came—I already said that.

Q. But you said you only had charge of the store ten days?

A. Something like that; I don't limit myself to any particular days.

Q. I want you to limit yourself though?

A. I cannot; I had no occasion to limit myself, my time was going on just the same—was supposed to.

Q. That was chiefly what you were interested in—the passage of time was it? A. No, sir.

Q. You had no reason, Mr. Baldwin—now frankly, sir, you had no reason to notice whether this instrument was dated when you signed it or not, did you?

A. Well, no, it was no interest to me—no, sir.

Q. And when you read the instrument you didn't have any idea what property was sought to be conveyed any more than before you read it, did you?

Objected to as immaterial and argumentative.

A. I just understood in general where it was situated.

(Testimony of G. A. Baldwin.)

Q. You didn't know how much it conveyed, did you? A. No, sir.

Q. The deed doesn't specify how much does it? Objected to as immaterial and not the best evidence.

A. I can't state.

Q. It says "all north of the Presbyterian Mission line," doesn't it? A. I think so.

Q. And there are a good many thousand acres north of that line, aren't there?

A. There must be—I don't know.

Q. Did you see Mrs. Dickinson sign this instrument? A. Yes, sir, I did.

Q. You saw her execute her name, or write her name on that paper you mean to say?

A. I did.

Q. Isn't it a fact that the instrument was handed to you and she acknowledged that she had signed her name to it?

A. The instrument wasn't brought to me at all, I went to it.

Q. Where did you find it?

A. In Ripinski's store.

Q. In Haines?

A. No, the postoffice at Chilkat.

Q. Who were present?

A. Why, a minister by the name of Rogers, and Joe Carr, and Mr. Ripinski and myself is all I know of—everybody was in there to get their mail.

Q. How do you know Mr. Fay wasn't there at that time?

(Testimony of G. A. Baldwin.)

A. Well, because he wasn't, is all I know.

Q. I asked you how you knew he wasn't there—you said everybody was there—how do you know he wasn't?

A. Mr. Fay wasn't in the country.

Q. How do you know he wasn't?

A. He couldn't have been in the country without having charge of the store, could he?

Q. How do you know he wasn't in Chilkat at that time—you didn't see everybody there, did you?

A. No, sir.

Q. You have no independent recollection of any one man who came into that store that day?

A. Which store?

Q. In the store, sir, where you executed this deed as a witness?

By Mr. JENNINGS.—He didn't say it was executed in the store; he said in the postoffice.

By Mr. LYONS.—You said in Ripinski's store, didn't you? A. Yes, sir.

Q. Now, Mr. Baldwin, you saw a great many people in that store that day, didn't you?

A. Yes, sir.

Q. How many?

A. Well, I wasn't keeping count of them.

Q. Great many, you said?

A. There was probably two or three hundred natives around there at the time.

Q. Just confine your attention for a while to the whites—how many white people were there?

(Testimony of G. A. Baldwin.)

A. Well, probably eight or ten white people may have called for their mail.

Q. How do you know that Harry Fay didn't come there that day and call for his mail?

A. Well, I can't tell you any better than I have.

Q. You can be honest and say you don't know, can't you?

A. I know he wasn't there.

Q. Well, how do you know?

A. Because he didn't come on the steamer until after that date.

Q. How do you know he didn't?

A. Because there wasn't any steamers running then.

Q. How do you know but what he went over from Haines to Chilkat?

A. Well, he wouldn't be apt to be tarrying in Haines; there wasn't any place to stay.

Q. I'm not asking what he would be apt to do—I'm asking you as to your knowledge as to whether or not Fay was there at Chilkat.

A. No, sir, he wasn't.

Q. And you positively swear, he was not?

A. Yes, sir, I do.

Q. And you're as positive of that as anything you have sworn to in this case?

A. Yes, sir, I am.

Q. And you can't remember one individual who was there?

A. I already told you two or three.

Q. Who were they?

(Testimony of G. A. Baldwin.)

A. Minister Rogers, and Joe Carr and Al James, and Ripinski and myself, and others I didn't know.

Q. How did you know but Fay was one of them?

A. Well, there was people living at Pyramid Harbor—

Q. Never mind; how did you know it—you say you didn't know who they were; how do you know they were people living at Pyramid Harbor?

A. I could go on and name who lived over there.

Q. I asked you, sir, whether you know who the other five men were who were there on that occasion and got their mail.

A. I didn't say they were there on that occasion.

Q. I beg your pardon, sir, you did.

A. I don't think I did.

Q. Didn't you say, sir, just a moment ago there were ten white people there the day that instrument was executed?

A. No, sir, I didn't intend to if I did.

Q. How many were there there?

A. I said eight or ten got their mail at the post-office; that many white men around there got their mail.

Q. How many got their mail that day?

A. Five is all that I know of.

Q. Did you count the others that were around there?

A. I didn't stay there all the time; I had business.

Q. How do you know Harry Fay mightn't have come and got his mail while you were out?

(Testimony of G. A. Baldwin.)

A. He might have hid in the bushes somewhere; I don't know.

Q. You said you didn't know how many other men could have got in the postoffice and got their mail because you had business and didn't stay there?

A. Yes, sir.

A. *Yes, sir.*

Q. Then, how do you know Harry Fay didn't go in there that day? A. Well, because he didn't.

Q. How do you know—do you know he didn't?

A. Well, I don't hardly know how to explain myself—he didn't get there until after that.

Q. You mean you didn't meet him until after that?

A. Well, I'll say that then—I didn't meet him until after that time.

Q. That's the reason you assign for saying he didn't get there until after the date of the execution of this instrument? A. Yes, sir.

Q. At the time you signed this instrument you say you didn't know how much land was included or described in the instrument?

A. No, not at that time—not right then.

Q. And nobody said anything about how much was included or intended to be conveyed?

A. Not right then; no, sir.

Q. Well, I'm asking you right then?

A. No, sir.

Q. And the terms of the instrument itself didn't convey any information to your mind as to how much was conveyed?

(Testimony of G. A. Baldwin.)

Objected to as immaterial; the deed is the best evidence.

A. Just as the deed reads.

Q. I'm not asking you for how the deed reads—I'm asking you if you derived any further information as to the amount of land conveyed, by the reading of that deed—I can read it as well as you can?

A. I understood it was a tract of land touching the Mission on the north.

Q. The Mission is divided from this land by a line then, is it?

A. There is a fence there; yes, sir.

Q. Well, now, how much land adjoins the Mission on the north?

Objected to as immaterial and not proper cross-examination.

A. I couldn't say.

Q. In fact you couldn't get any information as to how much land was sought to be conveyed by that instrument, could you? A. No, sir.

Objected to as immaterial and argumentative.

Q. Mr. Baldwin, when did you have the first conversation with Mrs. Dickinson about the amount of land conveyed by her to Ripinski?

A. Well, she came into the store quite often, and was asking me questions about it.

Q. You stated on direct examination to Mr. Jennings that you only knew one time that you talked to her about it, and now you claim she came in and talked to you several times?

(Testimony of G. A. Baldwin.)

A. I don't think you understood it. I said she only mentioned the sixteen acres to me once.

Q. How did she come to talk to you about that?

A. I was the only white man in the store at the time; that is, she was in to see all the time, and she spoke to me about parting with this land—

Q. Said she had parted with her land?

A. Yes, sir.

Q. How long was that after she sold the land?

A. There was quite a little talk—it was two or three weeks after; there was quite a little trouble over the matter I think at first.

Q. With whom?

A. The people around the Mission there.

Q. A good deal of trouble between her and Ripinski about it, wasn't there?

A. Yes, sir, I believe there was.

Q. And he refused to pay her a portion of the purchase price, didn't he?

A. No, sir, I don't think so.

Q. Do you know whether he did or not—I'm not interested in what you think?

A. Well, I think he paid it all to her.

Q. Didn't you just state, sir, that there was some trouble between her and him about the purchase price, after the execution of the deed?

A. No.

Q. I would like to have the stenographer read back there a line or two. (Referee reads back.) He had some trouble about the purchase price, didn't he?

A. Yes, sir, I think so.

(Testimony of G. A. Baldwin.)

Q. What was it she had the trouble about now?

A. Well, I'll take that back; I don't think she had trouble with him; I think it was her son.

Q. Mrs. Dickinson had trouble with her son?

A. No, Ripinski did.

Q. What about—this transfer?

A. Well, I suppose it was about that.

Q. Don't you know, Mr. Baldwin?

A. Yes, sir, I do.

Q. Then, why do you say you suppose so?

A. Well, I have answered your other question now.

Q. Now, you say that the trouble that occurred down at the Mission was the cause of the conversation between you and Mrs. Dickinson respecting her transfer to Ripinski—is that right—as to how much land she conveyed to Ripinski?

A. Well, that might have brought it up; yes, sir.

Q. Do you know, sir, what brought it up?

A. Well, she would be talking to me and telling me—

Q. How did she come to ask you about it?

A. I think I told you that once.

Q. Well, explain it again, will you?

A. Well, she was trading at the store, and she would come in and talk to me about things that was going on.

Q. And she volunteered to you this piece of information, that she had sold sixteen acres to Ripinski?

A. I might have asked her about it.

Q. Do you know whether you did or not?

(Testimony of G. A. Baldwin.)

A. I should think I did.

Q. You think you did? A. Yes, sir.

Q. Now, when did this conversation take place?

A. She was probably in the store every day after the deed was signed; I don't know just when we had the talk.

Q. Well, about when did it take place?

A. In December.

Q. December of 1897? A. Yes, sir.

Q. And she told you she had sold sixteen acres to Ripinski? A. Fifteen, I think it was.

Q. Did she attempt to describe to you the boundaries of that land or where it laid?

A. No, sir, she did not.

Q. She didn't state whether she owned any land over there at Haines or not, did she?

A. Yes, sir.

Q. What did she state about that matter?

A. Well, she said she owned sixteen acres over there and sold one to Mr. Dalton.

Q. Did she attempt to give you any description of the land she sold, or owned over there?

A. No, she said the Dalton acre was out at one corner.

Q. And she told you she had sold sixteen acres over there then—did she tell you how she acquired it? A. From her husband.

Q. Did she tell you how she had acquired it?

A. Well, it was him that took charge of the Northwest Trading Company over there, wasn't it?

Q. I'm asking you?

(Testimony of G. A. Baldwin.)

A. The Northwest Trading Company gave the post up, and I don't know whether he gave a deed for it or not, but they were living there and they gave it up.

Q. And she told you he had run the store there, did she?

A. Not only her, but other people too.

Q. I'm asking what Mrs. Dickinson told you—you understand me very well, sir. Now, as a matter of fact, she never told you how much land she had before she sold to Ripinski?

A. I never had any occasion to ask her.

Q. And as a matter of fact, when she made this conveyance to Ripinski, all the land Ripinski was claiming under that deed was wilderness—don't you know that to be a fact?

Objected to as not cross-examination.

A. No, sir.

Q. You know, sir, there was no more than one acre, down near the beach there, that had been improved, don't you?

A. What do you call wilderness?

Q. I call it wilderness when the ground is in its virgin state and hadn't been improved in any way.

A. Well, all the clearing that was done was the garden there and around where Ripinski's store now is.

Q. Not over an acre of ground, was it?

A. The largest trees had been cut down and—

Q. Not over an acre of ground had been cleared, had it? A. That's all I know.

(Testimony of G. A. Baldwin.)

Q. And you know it to be a fact there wasn't any more than that, don't you? A. No, sir.

Q. You're not as interested in knowing any facts in this case adverse to Ripinski as those in favor of him, are you?

A. If you want an answer, there might have been a thousand acres cleared there and I wouldn't know it.

Q. Why, of course—you weren't looking for anything of that kind, were you?

A. No, sir, I wasn't.

Q. But you do say that Harry Fay couldn't have been in Haines when you signed that deed as a witness, notwithstanding the fact he swore he was there?

A. I don't know about that—if he was there I didn't know anything about it.

Q. If he swears that to be a fact, you don't want to swear positively that it isn't true, do you—all you swear is that if he was there you didn't know it?

A. Well, I can swear he wasn't in the store at the time—he had never been in my sight until after that.

Q. I said Haines—I mean Chilkat, Mr. Baldwin?

A. My answer is just the same.

Q. You won't swear positively that Harry Fay wasn't in Chilkat the very day this instrument was signed by you as a witness?

A. He wasn't in my sight that day.

Q. I didn't ask you that, sir; I ask you to answer the question whether or not you're willing to swear

(Testimony of G. A. Baldwin.)

that Harry Fay wasn't in Chilkat the day you witnessed this instrument?

A. Well, no, I won't swear to that exactly; I can swear he didn't come to take charge of the store until after.

Q. He came subsequently for the purpose of taking charge of the store? A. Yes, sir.

Q. Now, you say you saw a portion of the consideration pass on the day of the transfer, the execution of this deed; how much money did you see pass?

A. A hundred dollars.

Q. In what—twenty dollar gold pieces?

A. No, I think more of it was in silver.

Q. About how much in silver, do you think?

A. Well, I don't remember as to that fact.

Q. I asked you how much in silver, and you said you thought it was more silver—more than fifty dollars in silver, was it?

A. I wouldn't say as to that. I know he counted out a hundred dollars.

Q. You said a while ago you thought it was over half silver—you wish to still stick to that?

A. Yes, sir.

Q. Did you count that money yourself?

A. I did not.

Q. You didn't take careful account of it as he handed it over, did you?

A. No, I didn't touch it.

Q. You don't know, as a matter of fact, how much money was paid over at that time?

(Testimony of G. A. Baldwin.)

A. He counted a hundred dollars to her—I was just sitting there glancing at it—I supposed there was a hundred dollars.

Q. Then you don't know of your own knowledge how much there was there?

A. No, sir, I don't. I know she received a hundred dollars.

Q. I'm not asking you that—I'm asking you how much money was actually paid at the time of the transfer—you don't know yourself, do you?

A. No, I do not.

Q. And you don't know as a matter of fact whether it was paid in gold, paper, or silver?

A. No, sir.

Q. You mean to admit, then, that you don't know whether it was paid in gold, silver, or paper?

A. I will—no, sir.

Q. And yet you said a moment ago that over half of it was paid in silver?

A. Well, since—

That's all, sir.

Redirect Examination.

By Mr. JENNINGS.—Have you any interest in this controversy, Mr. Baldwin?

A. No, sir, I have not.

Q. Do you own any property in Haines?

A. Yes, sir, I do.

Q. Did Sol. Ripinski promise to give you any interest in that land for your testimony?

A. No, sir.

Q. Did he promise to pay you anything for your testimony?

A. No, sir, he hasn't.

(Testimony of G. A. Baldwin.)

Q. How long have you lived in Chilkat?

A. Ten years this last March, I think.

Q. How large a place was Chilkat on December 2, 1897?

A. I mean ten years this September, Mr. Jennings.

Q. All right—how large a place was Chilkat then?

A. Well, about all the natives in the country, that was the only place to buy anything—

Q. How many white people lived at Chilkat?

A. Well, there was probably—the storekeepers was about the only ones that lived right at Chilkat.

Q. How many of them were there?

A. Well, there was but three people there.

Q. Well, three white men, storekeepers—

A. And about eight white people got their mail there.

Q. About eleven altogether?

A. Well, more than that possibly.

Q. Well, how many?

A. Well, the Humbert Expedition got their mail there at the time; there was quite a few men in that.

Q. Where had Harry Fay been working up to the time he came to relieve you at Chilkat?

A. I only know what he told me about that.

Q. Did you ever see him before he came to relieve you?

A. No, sir.

Q. You have seen him since quite often?

A. Yes, sir.

Q. The only persons you noticed at that trans-

(Testimony of G. A. Baldwin.)

action, the witnessing of that deed, were the five people you have mentioned? A. Yes, sir.

Q. You were expecting at that time Harry Fay to come up there to relieve you, weren't you?

A. No, sir.

Q. He came up, you say, to relieve you?

A. He did come and relieve me, yes.

Q. You were in charge of the store at the time you did sign this deed as a witness?

A. Yes, sir.

Q. And did you ever have any conversation with Harry Fay at all to the effect that this deed had been written up afterwards, after you had been called in to sign it—after the date of it?

A. There is no doubt but what I did.

Q. Well, you don't understand me—did you ever have any conversation with Harry Fay in which you told him that the deed wasn't executed on the day it purports to have been executed, but was executed and dated back—did you ever admit any such a thing to him? A. No, sir, I did not.

Q. The witnessing of this deed happened at the time you were in sole charge of the store at Chilkat, as I understand you?

Objected to as leading.

A. It was.

Q. How long after you witnessed that deed was it that Harry Fay came up and took charge of the store?

A. Well, I should think eight or ten days—maybe not that much; I know he came unexpectedly one night about nine o'clock, in the dark.

(Testimony of G. A. Baldwin.)

Recross-examination.

By Mr. LYONS.—There were a good many men, you say—the Perry-Humbert Expedition were at Haines and Chilkat, got their mail at Chilkat at that time? A. Yes, sir.

Q. About how many men were there, Mr. Baldwin?

A. I don't know how many were in that expedition.

Q. Twenty-five, thirty, or forty?

A. Yes, sir, I think that many; that was the only postoffice there was in that part of the country.

Q. You were a witness for Sol. Ripinski before, were you—when this matter was up before?

A. I was subpoenaed but was never a witness.

Q. Subpoenaed by Mr. Ripinski, were you?

A. By both sides.

Q. Are you sure about that—by both sides?

A. Yes, sir.

Q. You were served with that subpoena?

A. Yes, sir.

Q. What was stated in the subpoena?

Objected to as immaterial, irrelevant and incompetent.

Q. What did the subpoena state—how do you know—weren't the subpoenas issued to you by the same side of the case?

A. Well, it was different people that gave them to me.

Q. It was the U. S. Marshal that gave them to you, wasn't it?

(Testimony of G. A. Baldwin.)

A. I think the United States Marshal gave me Ripinski's, yes, sir.

Q. Who gave you the other one?

A. I don't know as to that.

Q. It wasn't any of these plaintiffs, was it—none of the plaintiffs in this case, was it?

A. I think it was Mr. Lane.

Q. Mr. Lane is away from Haines at this time, isn't he?

A. He seemed to have changed to the other side of the question—

Q. Can't you respond to my question? He is away from Haines at this time, is he not?

A. He was when I left this morning; yes.

Q. And has been away for some time, hasn't he?

A. Yes, sir.

Q. And you have been pretty friendly with Sol. Ripinski right along, haven't you?

A. Well, I have been friendly with everybody about the Mission, I guess.

Q. You think you're friendly with everybody?

A. I hope so.

Q. You're not as well acquainted with other people about the Mission, though, as you are with Sol?

A. I ought to be, better.

Q. You met Sol. about seven or eight years ago?

A. About ten years ago.

Q. And have known him ever since?

A. Yes, sir.

Q. And you have no interest in this case?

A. Not a particle.

(Testimony of G. A. Baldwin.)

Q. And you have a lot in Haines—

A. Yes, sir—

Q. —in the disputed tract, too?

A. Yes, sir.

Q. I call your attention now to—

A. I can describe it—I don't know the number of it on there.

Q. I call your attention to Plaintiffs' Exhibit No. 1 and ask you if you can point out on there your lot?

A. It is in Block 5—it should be Baldwin, Falkner and Dryden—it is in my name.

Q. You own that lot, do you?

A. The three of us together; yes, sir.

Q. Where are your partners now?

A. One of them is at Haines and one at Klukwan.

Q. How long have you owned that lot?

A. Well, I think it has been a year anyway.

Q. And Mr. Ripinski has promised you that in case he gets a patent for this tract he will give you a deed to your lot?

A. No, sir; I was asked to contribute to help support this case and I didn't pay enough for the lot to care anything about it.

Q. You don't care anything about it, then?

A. No, sir.

Q. Then as far as you're concerned, it is immaterial which side prevails in this suit?

A. Yes, sir.

Q. That is, you didn't think enough of the lot as an investment to pay anything out on it?

(Testimony of G. A. Baldwin.)

A. I paid three dollars for my interest, and I didn't intend to pay ten dollars in order to protect three.

Q. That's the only reason why you didn't take part with the plaintiffs, was because the lot wasn't of sufficient value to justify it?

A. I have always thought that Ripinski would win it in the long run.

Q. You have always thought Ripinski would win in the long run, have you? A. I have; yes, sir.

Q. You thought it would take a pretty long run, didn't you?

A. I don't know about that either.

Q. You know, Mr. Baldwin, that two suits have already been tried about this matter and your theory has been disputed by the courts and juries every time? A. I thought it was four suits.

Q. And notwithstanding that fact, you as a deep-sea lawyer think he will win out in the long run?

Objected to as immaterial and argumentative.

A. As I said before, I haven't any interest either way.

Q. You said a while ago you thought he would win out in the long run; he was beaten in four or five short runs, and you think he will win out in the long run—now, you know very well, sir, that you have an interest in this case, haven't you?

A. Well, I have told you; you can prove it now if you wish.

Q. And you know also, sir, that you have a deal

(Testimony of G. A. Baldwin.)

with Ripinski that in case he gets a patent you will get a deed to your lot, don't you? A. No, sir.

Q. Still you believe he will prevail in the end, do you?

A. That's hard to tell; that's for the Court to decide.

Q. I should hope so—not for you.

Redirect Examination.

By Mr. JENNINGS.—You say you're a part owner in Lot 5, Block 5, you and Dryden and Falkner own that? A. Yes, sir.

Q. And the deed is in your name?

A. I had it made out myself, yes, and they put it in my name.

Q. And who was it that came to you and asked you to contribute ten dollars to this common sinking-fund for these jumpers? A. Nobody.

Q. Nobody mentioned the sum of ten dollars—did they ask you for an assessment?

A. Yes, sir.

Q. Who? A. I think it was Mr. Martin.

Q. You're not one of the plaintiffs in this case?

A. No, sir; my name isn't on there, I don't think.

Recross-examination.

By Mr. LYONS.—The reason you didn't contribute your assessment when you were requested by Mr. Martin was because you didn't think the lot was of sufficient value to justify it?

A. That's the very reason.

Q. If you thought Mr. Ripinski should win and

(Testimony of G. A. Baldwin.)

would win in the long run, why did you buy an interest in that lot in the first place?

A. Well, we gave it to help out the fellow we bought the lot from was all.

Q. Why didn't you give him the three dollars if you thought Ripinski had the best right to the land?

A. He agreed to pay it back; we took it more as security.

Q. Then you don't own that lot at all?

A. Yes, sir, we do.

Q. If you took it as security you don't own it?

A. We had the deed made out in our names.

Q. Don't you know that if a deed is taken as security it is nothing more than a mortgage?

A. Well, we own that lot now.

Q. You never foreclosed on it, did you?

A. No, sir.

Q. It was taken as security in the first place, wasn't it?

A. Well, it was understood between ourselves.

Q. It was given as security for three dollars, your interest?

A. No, we bought the lot from him, didn't care whether we had it or not.

Redirect Examination.

By Mr. JENNINGS.—Who was the man you bought the lot from?

A. I forget his last name—Jesse Craig, I think it was.

Q. Man by the name of Jesse Craig—and Dryden and Falkner were in with you?

(Deposition of Franklin A. Rogers.)

A. Yes, sir; we offered to sell out to him several times.

By Mr. JENNINGS.—I now wish to read into the record the deposition of F. A. Rogers, the other subscribing witness to the deed already in evidence. Just note there, Mr. Gillette, that this testimony is admitted by stipulation subject to objections to be made at this time.

[Deposition of Franklin A. Rogers, for the Defendant.]

Deposition of FRANKLIN A. ROGERS, a witness for the defendant:

Direct Interrogatories.

(Propounded by R. W. JENNINGS, Defendant's Attorney.)

Q. State your name, age, and residence.

A. Franklin A. Rogers; age fifty-four; No. 569 Williams Ave., Station B, Portland, Oregon.

Q. Were you ever a resident of Haines, Alaska, and if so how long and when did you reside there?

A. Yes, May 8th, 1896, to last of November, 1896; April, 1897, to January, 1898; off and on from January, 1898, to May, 1898.

Q. Do you know one Sarah Dickinson and one Sol. Ripinski, residents of Haines or Chilkat, Alaska?

A. Yes, since May, 1896.

Q. Are you acquainted with any land at said Haines, Alaska, known as the Dickinson tract or claim?

A. Yes.

Q. If your answer be yes, state the circumstances

(Deposition of Franklin A. Rogers.)

and extent of your information relative to the location and identity of said land or claim?

A. When I first went to Haines in 1896 to rebuild the Mission, I was informed by Mr. Warne—

Plaintiffs object to the answer on the ground that it is incompetent, irrelevant and immaterial, and hearsay.

—and Miss Willard, the native interpreter, Mr. Clark and others that the two buildings and ground belonged to Mrs. Dickinson and was the old trading-post while Mr. Dickinson was alive, and that they lived and had a store in the building next the Mission and the second one was the warehouse, and all the time that I was there I never heard it called by any other name than the Dickinson property. When I returned in 1897 to take charge of the Mission and property as superintendent and missionary in Mr. Warne's absence, Mr. Jack Dalton told me he had bought an acre joining the Mission property on the north and the water front on the east, and if I wished I could have the use of said land for a garden if I wished to. (See sketch for location on separate sheet.) And Mrs. Dickinson and Mr. Warne and others told me that the acre belonged to Dalton.

Q. State if you know the area, approximate length and breadth of the same?

A. Mrs. Dickinson and her son William told me—

By Mr. LYONS.—Now, Mr. Jennings, I don't see how I am to get my objection in unless you finish reading the answer and allow me to object before it is taken down.

(Deposition of Franklin A. Rogers.)

By Mr. JENNINGS.—Well, it is stipulated then, that a motion to strike will have the same effect as if it were an objection before the answer was made. That will serve the same purpose.

By Mr. LYONS.—Very well.

A. Mrs. Dickinson and her son William told me it extended from the north line of the Mission, north to Blind Isaac's less the corner one acre that had been sold to Dalton, and from the water on the east, thence to the west to make fifteen acres including Dalton's. I never took the trouble to measure it, but went over with Sol. Ripinski what he said included fifteen acres. The distances on the waterfront are, Dalton's 110 feet; then 175 feet to Blind Isaac's. Why I know this, I have measured from the big rock on the beach at mid-tide which is on the north line of the Mission, north to help the natives to locate their homes so as to have them recorded for some two thousand feet north, for Jack, Jim, Paddy, Joel, Dennis, Henry No. 1, Phillips, Charley Joe, Henry No. 2, Phillips, and Dick all natives.

Plaintiffs move to strike the answer for the reason that the same is incompetent irrelevant and immaterial, and hearsay. And for the further reason that the answer fails to indicate the time when Mrs. Dickinson stated to the witness that she claimed the premises which he has described.

Q. (Int. No. 7.) State, if you know, whether or not said land or claim lies adjacent to the waterfront, and if it does what is the approximate extent along the same?

(Deposition of Franklin A. Rogers.)

A. Yes, to tidewater, two hundred and eighty-five feet from big rock to Blind Isaac's. (The land would have to run from tidewater west about 2,500 feet to make fifteen acres.) Stricken.

Plaintiffs move to strike the answer for the reason that it is speculative, argumentative, and does not show that the witness knows anything about what land was actually conveyed by Mrs. Dickinson to Ripinski.

Q. (Int. No. 8.) State, if you know, whether or not said land or claim lies adjacent to the Haines Mission ground, and if it does, what is its length along said ground?

A. Yes, the land lies north of Mission and joins on to the Mission. The Dalton trail crosses the south edge of said land; (and in answer No. 7, about 2,500 feet to make the fifteen acres.) Stricken.

Move to strike the answer for the reason that all the information which the witness states he has concerning the land conveyed to the defendant is based on hearsay, and consequently any description he gives of the land is necessarily based on hearsay. It is therefore, incompetent, irrelevant and immaterial.

Q. (Int. No. 9.) Do you know whether or not said Dickinson tract or claim was ever fenced?

A. Do not know whether it ever was all fenced, but a portion on the east end had been used for a garden and was fenced when I first went there in 1896, and it had been fenced for a ways on the north line I should judge by the way the small timbers and brush had been cut and there had been some slashing done

(Deposition of Franklin A. Rogers.)

near the line of the north fence of Mission, but by whom I do not know as it was before my time there. I should judge the fence west of the garden and on the north line had been brush and poles.

Move to strike the answer for the reason it shows the witness knows nothing as to the ownership of the fence or who built the same and there is nothing in evidence at this time to indicate it was ever owned or claimed by Mrs. Dickinson or owned or claimed by her alleged grantee, Ripinski.

Q. (Int. No. 10.) If your answer be that it was, please state if you know when, by whom, with what kind of a fence, and what part, was fenced?

By Mr. JENNINGS.—Witness refers to answer No. 9.

Q. (Int. No. 11.) Were you ever concerned in any business transaction relative to said Dickinson tract or claim? A. Yes.

Q. (Int. No. 12.) If you answer that you were, please state what it was, when and with whom; also whether or not at or about the time of the said transfer the said Dickinson tract or claim was definitely described and pointed out to you by anyone—if so, by whom?

A. First with Mrs. Dickinson some time in the latter part of November, 1897, to see if she would sell the same to Sol. Ripinski. Mrs. Dickinson only stated to me what she claimed, and that the Colonel had made her an offer two or three times but she thought she should have more money than offered her. Then again in December, about the 9th or 10th after

(Deposition of Franklin A. Rogers.)

returning from Skagway and Dyea with the Colonel, I saw her again and reported her price to Ripinski and he decided to take the place. I then went to her, Mrs. Dickinson and went over to the store with me and the papers were made out and signed by Mrs. Dickinson and I counted out the money to her and for her at her request to see that all was right. There was a dispute about a five dollars of an account and I went to her home with her, and she explained the matter to me and after I had a talk with the Colonel he gave me the five dollars and I went to Mrs. Dickinson's home and gave the five dollars to her. I was over at Chilkat, I think, the 11th, to see the Colonel about a store building to be built in Dyea, and the Colonel says: "Mrs. Dickinson brought the money back and went away and left it laying there," showing me where she left it. I then went to her house, and she Mrs. Dickinson said Billy, her son, had come home and told her she ought to have had fifty dollars more for the place. I returned to the Colonel and stated the matter to him and he gave me the extra fifty dollars. I took it and the original amount and paid it all over to Mrs. Dickinson and she told me that was all she had left of the store, building and ground and thanked me for helping her to sell it and stated again there was fifteen acres less one she sold to Dalton. The 12th of December the colonel gave me the deed and two dollars to have it recorded at Dyea when I went up there the 13th and Judge Smith had the deed recorded and it was sent back to the colonel.

(Deposition of Franklin A. Rogers.)

Plaintiffs move to strike the answer of the witness on the ground it is incompetent, irrelevant and immaterial and hearsay; and for the further reason there is absolutely no evidence in this record to show that Mrs. Dickinson ever had fifteen acres to convey and her mere statement of ownership of that amount of land is self-serving and no evidence of her interest in any land whatsoever which she could convey.

Plaintiffs also move to strike that portion of the witness' testimony with reference to the negotiations of sale for the reason that the same is incompetent, irrelevant and immaterial, and if the deed is of any value whatever, the negotiations, if any, were merged in the deed.

By Mr. JENNINGS.—Oh, Mr. Lyons, I see there is more to that answer—I didn't complete it. This is the balance of it—answer to Interrogatory No. 12—

A. —About December 21st I was down to the Mission and Mr. Ripinski had put some goods into the store building and Billy Dickinson had broken the lock of the door and had taken possession of the property with a Winchester as one of the heirs, and it was reported to me. I went down and had a long talk with Billy and he told me that he would shoot the first one that offered to take his rights. He stated that all the fractions that had been staked out including Mr. Warne's, my piece, and part of Miss Campbell's (nee Manning), and some claims west of Warne and some east of my claim was on the Dickinson estate and that they would have to pay him his

(Deposition of Franklin A. Rogers.)

share as one of the heirs, but Spooner's building was on Dalton's acre. He told me as near as he could where the land lay.

After advising him what to do he took my advice and took his gun and went home to Chilkat, and the next day I went over and Billy came to the Colonel as I had advised and stated his terms and the Colonel paid his (Billy's) price and I witnessed before U. S. Commissioner Smith in Ripinski's office.

By Mr. LYONS.—My objection will all apply and follow the answer as completed.

Q. (Int. No. 13.) At the time of your business transaction or connection with said land, do you know whether one W. W. Warne claimed any part of the same?

A. Mr. W. W. Warne had a piece staked out (and on file at Dyea, but later in the month, about December 14th or 15th), but I did not think at that time that the fifteen acres run back that far west as I never gave it a thought nor figured out how far the Dickinson claim would run west from the beach to make fifteen acres. Said Warne's claim had a notice on it by himself some time in November, and I staked out two hundred by two hundred east of Warne's and put up a notice December 7th and had on record December 18th at Dyea.

Q. (Int. No. 14.) If you answer that he did, please state if you know, what part of same he claimed, and whether you had any conversation with him in relation to the same.

(Deposition of Franklin A. Rogers.)

By Mr. LYONS.—Just let the record show that I move to strike the last answer of the witness as incompetent, irrelevant and immaterial.

A. (To Int. No. 14.) Mr. Warne was about a hundred and twenty-five feet west of Mission fence, thence west 150 feet thence north 200 feet thence east 150 feet, thence south 200 feet to starting point. I had not up to that time that I can recall told him that Ripinski had bought the Ripinski property.

Plaintiff moves to strike the answer on the same ground as the preceding answer.

Q. (Int. No. 14.) State whether or not you informed said Warne of your transaction or connection with said Dickinson tract or claim?

By Mr. JENNINGS.—There is no answer to that but it and the following question are answered together.

Q. (Int. No. 16.) If you answer that you did, please state fully the information given to him and the time of the same.

A. (To Ints. No. 15 and 16.) When I returned from Dyea December 19th, I told Mr. Warne that I had bought Mrs. Dickinson's right for Sol Ripinski before I went to Dyea, the 13th of the month.

Plaintiffs move to strike the answer as incompetent, irrelevant and immaterial and there is no evidence to show that he bought any such rights from Mrs. Dickinson or that she had any rights to convey to any property except what is now actually occupied by the defendant Ripinski and not in controversy in this case.

(Deposition of Franklin A. Rogers.)

Q. (Int. No. 17.) State whether or not you ever claimed any part of the said Dickinson tract or claim?

A. As stated in No. 13, I had 200x200 feet, but had never stopped to measure up to see if it was on the fifteen acres. I run east from Warne's stake 200 feet, thence north 200 feet, thence west 200 feet, thence to Warne's northeast stake, then down his south line 200 feet to starting point.

Plaintiffs move to strike the answer as incompetent, irrelevant and immaterial.

Q. (Int. No. 18.) If you answer that you did, please state how much, and where it lies with reference to the portion of the Dickinson land claimed by the said Warne.

By Mr. JENNINGS.—This seems to have been answered in No. 17, as there is no answer to No. 18 at all.

By Mr. LYONS.—Is No. 19 there?

By Mr. JENNINGS.—Yes, I'll read right on.

Q. (Int. No. 19.) State whether or not you are acquainted with Mrs. Campbell, nee Manning, of Haines Mission, Alaska? A. Yes.

Q. (Int. No. 20.) If you answer that you are, please state whether or not you ever informed her of your connection with said Dickinson land claim or tract.

A. Miss Manning wished me to stake out a piece for her north of my piece and I started north from my N. E. stake run two hundred feet north, thence west 200 feet, thence south 200 feet to Mr. Warne's

(Deposition of Franklin A. Rogers.)

northeast corner, thence east 200 feet to starting point. I had told Miss Manning I had bought Mrs. Dickinson's property for Sol. Ripinski when I had made the deal for Mrs. Dickinson and Ripinski.

Plaintiffs move to strike the answer for the reason that it is incompetent, irrelevant and immaterial.

Q. (Int. No. 21.) If your answer to the last above interrogatory be yes, please state when and what that information was.

A. After I had been round the tract, and Billy Dickinson had been with me, I told Mrs. Campbell (nee Manning) that about half of her 200 feet and all of my 200 feet, and Mr. Warne's, Miss McPherson's and four or five other claims relatives of Mr. Warne, were on the fifteen acres Mrs. Dickinson claimed and had sold to Sol. Ripinski, and at this time I told Mr. Warne we weren't in it as the Colonel could claim the whole business, and also told Miss McPherson that was there at the time her piece came inside the Colonel's claim, and also Al James and one other party I told the same.

Plaintiffs move to strike the answer on the ground that it is incompetent, irrelevant and immaterial, and merely an opinion of the witness stated to somebody else concerning his views as to the ownership of the ground—in no way affects any of the issues in this case.

Q. (Int. No. 22.) Do you know whether or not the said Mrs. Carapbell (By Mr. Jennings: "Owns," I think it should be there, Mr. Lyons) any part of the Dickinson tract or claim?

(Deposition of Franklin A. Rogers.)

A. Yes, about 85x200 or the south half less about fifteen feet. Her eighty-five feet runs north from Warne's northeast corner 85 feet, thence east 200 feet, thence south 85 feet, thence 200 feet to starting point.

Plaintiff moves to strike the answer for the reasons assigned in his motion to strike the last preceding answer.

Q. (Int. No. 23.) If you answer that she did claim some part of the same, please state the location of her claim with reference to the location of the claim of said Warne.

By Mr. JENNINGS.—There is no answer to that one.

Q. (Int. No. 24.) State anything further that you know relative to the identity, position, and description of said Dickinson claim or tract?

A. There was no buildings put on any of the land claimed by Mrs. Dickinson when I run the wire fence and when Rapinski made his claim known and run his wire around the entire piece including all of Warne's, mine, and Miss Manning's, Al James and one other west of my piece and some west of Mr. Warne. Mr. Ripinski warned us all not to put anything on said land as it was his, but told me to let my piece be as it was and that I should have it, and to tell Miss Manning the same about what was on his property. Spooner was building on Dalton's acre at the time. I did no more on my piece for I was satisfied it was on the fifteen acres after figuring it out, and left trusting the Colonel to do as he agreed

(Deposition of Franklin A. Rogers.)

about my 200x200 feet, but the others paid no attention to what the Colonel had told them, but kept improving and putting buildings upon said land and fencing the same after having been warned off by the Colonel.

Plaintiffs move to strike all of the witness' answer excepting the admission on his part that Ripinski agreed to protect him in the land that he claimed or the portion of this tract he claimed for the reason that all of the rest of the answer is incompetent, irrelevant and immaterial.

Cross-interrogatories on Behalf of the Plaintiffs.

Q. (Int. 1.) Did you have a conversation with Mrs. Dickinson on the 9th, 10th or 11th of December, 1897, about Ripinski buying Mrs. Dickinson's land? If so, state that conversation.

A. Yes, and also the latter part of November. About the time stated I closed the bargain with Mrs. Dickinson and Sol. Ripinski on the sale and purchase of what is known as the Dickinson property joining Haines Mission on the north and lying between the Mission and Blind Isaac's. Mrs. Dickinson after the final bargain was made asked me to go with her and see that all was right and to see that the money was collected. I went with her to Ripinski's store and she signed the deed and I counted the money out in her lap for her. There was a misunderstanding about five dollars on account and I went home with Mrs. Dickinson and she explained to me about the five dollars and then I went to the Colonel and told him how I found the matter and he gave me the five dol-

(Deposition of Franklin A. Rogers.)

lars and I went and gave it to Mrs. Dickinson. I think this was the 9th—I believe it was. The 11th I was over to Chilkat and Ripinski said, “Well, Rogers, Mrs. Dickinson brought back the money and left it there,” designating where she, Mrs. Dickinson had left it. I went and saw her, and she said Billy her son had come home and told her she should have had fifty dollars more. I reported the same to Ripinski. He gave me the fifty dollars, and I took it and the original and went to Mrs. Dickinson’s house, counted out the first amount to her, then the fifty dollars extra, for which she thanked me and said that was all she had left of the store, buildings and the fifteen acres of ground and I advised her not to let Billy or anyone have one cent of the amount, but to use it carefully and make it last as long as possible. Mrs. Dickinson claimed there was fifteen acres less one she had sold to Jack Dalton.

Plaintiffs move to strike the answer as not responsive to the question, incompetent, irrelevant and immaterial.

Q. (Int. No. 2.) On the 21st or 22d of December, 1897, did you with the aid of a native named Willy run a wire fence around your lot and Mrs. Campbell’s (nee Miss Manning) and also Mrs. Rogers’ lot and part way around the lot of W. W. Warne?

(Deposition of Franklin A. Rogers.)

A. Yes, around Mrs. Campbell's (nee Manning) my own, Mrs. Rogers' and what made the east line of Mr. Warne's.

(Accompanying said answer is a diagram thus.)

W. W. Warne		
Rogers	Manning	Mrs. Rogers

East Line.

Q. (Int. No. 3.) Sometime between the 20th of December, 1897, and the first of January, 1898, did you help the defendant and Mrs. Dickinson settle their accounts, and if so, was there at any time any conversation about the land? If yes, state it?

A. No. After paying Mrs. Dickinson back the original and fifty dollars extra, I had no more conversation with Mrs. Dickinson but did with Billy Dickinson, her son and heir to the estate. He showed me what he claimed and stated Mr. Warne, myself, Miss Manning and west of Spooner's or Dalton's and north of same and west of Warne's were all on the fourteen acres left of the fifteen, and after talking with him quite a while he said he would go and see the colonel. Billy had taken possession with a Winchester. I think this was about the 21st of December. The next day I went to Chilkat, and Billy and Ripinski came to an agreement and Ripinski paid Billy his price to relinquish his rights as

(Deposition of Franklin A. Rogers.)

heir to the Dickinson property at Haines and I witnessed it before the U. S. Commissioner who was there at the time.

The plaintiff moves to strike the answer as incompetent, irrelevant and immaterial.

Q. (Int. No. 4.) Was that before or after the deed from Mrs. Dickinson to the defendant, and if you know state what day it was in December that the deed was executed and delivered?

A. This with Billy was after I had paid his mother the money and I took the deed to Dyea December 13th and two dollars from Ripinski to have it recorded. Am not positive as to date of deed but I believe it was the 9th or 10th of December.

Counsel for plaintiffs now moves to strike all of the testimony of the witness Baldwin with reference to the transfer from Mrs. Sarah Dickinson to the defendant Ripinski for the reason that there is no evidence to indicate that Mrs. Dickinson ever owned, occupied, or possessed any premises in the vicinity of Haines that she could convey except the premises now occupied by the defendant Ripinski which are not in controversy in this action.

We also move to strike all of the deposition of the witness Rogers that has been read in evidence for the same reason assigned in the motion to strike Baldwin's testimony, and for the additional reason that all of said deposition that could be considered in any way material to the issues in this case is based on hearsay.

[**Testimony of M. Ripin, for the Defendant.**]

M. RIPIN, a witness called on behalf of the defendant, and being first duly sworn, testified as follows on

Direct Examination.

By Mr. JENNINGS.—How do you spell your name? A. R-i-p-i-n.

Q. Your name was originally Ripinski, was it?

A. Yes, sir.

Q. You had it changed by the Court?

A. Yes, sir, by law.

Q. Are you a brother of Sol. Ripinski, the defendant? A. Yes, sir.

Q. Do you remember when your brother Sol. Ripinski had a deal with Mrs. Sarah Dickinson, by the terms of which certain land at Haines was conveyed to Sol. by Mrs. Dickinson? A. Yes, sir.

Q. Where was that land situated, if you know?

Objected to on the ground that real estate can only be conveyed by deed, and the deed is the best evidence as to where the land is situated.

Q. I mean at Haines, Chilkat, Skagway, or where was it? A. At Haines.

Q. Do you know when the deed between Sol., your brother, and Mrs. Dickinson was made?

A. Yes, sir.

Q. When was it? A. In December.

Q. What part of December, 1897?

A. I think it was the second day of December.

Q. What, if anything, did you do with reference

(Testimony of M. Ripin.)

to fencing any portion of the tract of land that Mrs. Dickinson conveyed to your brother?

Objected to as irrelevant, immaterial and incompetent.

A. I helped—a part of it.

Q. Helped put up a fence? A. Yes, sir.

Q. Now, I call your attention to the plat marked Plaintiffs' Exhibit No. 1; and I call your attention to the tract of land there marked "Mission," to the south, and the tract marked "Ripinski Homestead" to the west—

A. Yes, sir.

Q. —and I want you to describe, as near as you can, where you put that fence?

A. We put the fence right straight here.

Q. Describe it by names, points on there—don't say "here" and "there"—here is the beach down here, and here is Sol. Ripinski's house?

A. Yes, sir.

Q. And here is Corner No. 2, and Corner No. 1?

A. Yes, sir. We fenced it off from Blind Isaac's house, not the house but Blind Isaac's called the Dalton Street, now, away up around and down to the Mission.

Q. Well, did you build that fence along what is called on here Main Street and the old trail that was there?

Objected to as leading.

A. I don't know that but I see the fence there—I only helped part of it on this side.

Q. You didn't build the fence along the trail yourself? A. No, sir.

(Testimony of M. Ripin.)

Q. Did you build the fence—now, what part of the fence did you build?

A. I helped part of it on the side, the Blind Isaac side.

Q. On the north side of this tract?

A. Yes, sir.

Q. Well, how far out now, did you see that fence?

A. Well, I have seen that fence after it was done, all around.

Q. How long after the deal between your brother and Mrs. Dickinson was it before you began building that fence?

A. How many days you mean?

Q. Yes, sir.

A. I think it must have been eight or ten days—I mean a few days after, probably eight or ten days.

Q. Probably eight or ten days after the deal—now, why do you say the fence was built around there—first what kind of a fence was that?

A. Wire fence.

Q. Well, now, Mr. Ripin, this tract, Survey No. 573 is in quite an irregular shape, you see. Did you build the fence just exactly along the lines of this Survey No. 573—for instance, from Corner No. 1 to Corner No. 3 and then to Corner No. 4 and then to Corner No. 5 and then No. 6 and so on?

A. No, sir, we run the line right straight up.

Q. You run the line straight from Blind Isaacs'—

A. Yes, sir, straight up the street.

Q. Away up?

A. Yes, sir, up the line.

(Testimony of M. Ripin.)

Q. And what about the line that runs towards the beach there, did you enclose the Dalton acre?

A. We did not, no, sir.

Q. You just run up to where you considered Mrs. Dalton's acre would be?

A. Yes, sir.

Q. And didn't fence that?

A. No, sir.

Q. Now, what kind of a fence was it?

A. It was a barbed wire fence.

Q. Now, you say it was about the 8th or 10th of December as near as you can remember when you began that fence?

A. Yes, sir.

Q. Did Mr. Fay or anyone else at that time have any buildings or tents or houses of any kind on that tract of land?

A. It wasn't on there at that time.

Q. I mean excepting those two houses down on the beach there—

A. Only them two houses which my brother is occupying now was there—that's all.

Q. That's all that was on that tract of land at all?

A. That's all, yes, sir.

Q. When was the last time, Mr. Ripin, that you saw that fence intact, that is, before it had been broken down?

A. The last time I seen it must have been the middle of January.

Q. Of what year?

A. The year 1898.

Q. Do you remember when the Humbert Expedition landed there at Chilkat, and the people swarmed over to Haines, some of them, Mr. Ripin?

(Testimony of M. Ripin.)

A. Well, I wasn't exactly there at the time they came, I was over at Dyea.

Q. How long have you lived at Chilkat or Haines, in that neighborhood?

A. Well, I came there about the 28th or 22d of November, 1897, and I stayed there until the first of January, went over to Dyea, and then I came back about five or six days and stayed there—about a week longer, and then went back to Dyea again.

Q. Do you know when the rush into Porcupine began, and people came into Haines—

A. I think that was about July or August—

Q. Of what year? A. Of the year 1898.

Q. Did that rush bring quite a number of people to Haines?

Objected to as leading.

A. I expect so.

Move to strike the answer as giving the witness' expectations and not a statement of fact.

Q. Did it? A. Well, I wasn't over there.

Q. You weren't there at that particular time?

A. No, I was in Dyea.

Q. Well, when did you return to Haines then?

A. I came there off and on you know, for a day or two—

Q. From Dyea?

A. Yes, Dyea over to Haines and Chilkat.

Q. Did you ever see that fence you helped to build, in its unbroken state after this Porcupine rush?

(Testimony of M. Ripin.)

A. Oh, after that I only seen one side, that's all; where Blind Isaac's is it stood pretty good, while the other all broke down.

Q. But that part of that fence on the north side of this tract still remained?

A. Still remained, yes, sir.

Q. The part on the south side, on the trail, was all broken down, wasn't it?

A. All broken down, yes, sir.

Q. What about the part on the end of this tract, over towards what would be the west side of this plat, this part over here?

A. Well, I didn't go up there, I couldn't tell.

Q. You don't know whether that was broken down or not?

A. No, I run upright there several times to see that it was all broke down—here.

Q. You don't mean to say you ran out to see this cross-piece out here? A. No, sir.

Q. This other piece here, you had seen intact?

A. Yes, sir, I noticed that and walked up the beach a piece and noticed it was there yet, yes, sir.

Q. Do you know what land Mrs. Dickinson sold to your brother? A. Yes, sir.

Q. Well, what was it?

Objected to for the reason that if any land was conveyed at all the deed is the best evidence and the only evidence that can be admitted to prove the conveyance of real estate.

A. Yes, sir, fifteen acres—I heard her say myself.

(Testimony of M. Ripin.)

Move to strike the answer as not responsive and hearsay.

Q. Do you know an Indian, or house of an Indian—residence of an Indian down at Haines known as Blind Isaac's house? A. Yes, sir.

Q. Where was that residence—or were you familiar with that residence at the time of the making of this deal between your brother and Mrs. Dickinson? A. Yes, sir.

Q. Where was Blind Isaac's house then?

A. Well, it was about, I think about ten or fifteen feet from her house, this was left out for a street.

Q. Ten or fifteen feet from her loghouse that was on what is called the Ripinski homestead there?

A. Yes, sir.

Q. About how far was it from the fence on Mrs. Dalton's acre where you run around it?

A. How many feet it was?

Q. Yes, how many feet from there?

A. I think about a hundred and seventy-five feet.

Q. To the north or to the south?

A. To the Mission, from Blind Isaac's.

Q. A hundred and seventy-five feet from—

A. Dalton acre.

Q. —up to Blind Isaac's? A. Yes, sir.

Q. Blind Isaac's would be to the north of the Dalton acre about 175 feet? A. Yes, sir.

Q. Now, I understood you to say it was at Blind Isaac's you began to build that fence?

A. Yes, sir.

(Testimony of M. Ripin.)

Q. And you run the fence away from the beach, did you not?

Objected to as leading.

A. Yes, sir.

Q. Could you tell how far back from the beach you run the fence?

A. Well, I guess about twenty feet from high-water mark.

Q. I mean how far back from the beach did the fence extend—how far back did you go from the beach, from the water?

A. Well, it would be about twenty feet.

Q. That's where you started? A. Yes, sir.

Q. How far did you go into the woods with the fence?

A. I couldn't tell you how far—away up, pretty near to where the sawmill is.

Q. You don't know how far that is?

A. I don't know exactly the length.

Q. I wish now you would look at this Plaintiffs' Exhibit No. 1 and mark about where was the north-east corner of the fence you built—down here in this place called the Ripinski Homestead is, here is where those two houses were where Sol. lives—just in front of it there is the water, and I understand you to say, you built the fence to the westward from there? A. Yes, sir, this way.

Q. Now, can you tell about where you put, where you stopped building that fence—where the fence ended?

(Testimony of M. Ripin.)

A. I think there they call now Sixth Avenue, somewheres near there.

Q. About how far from the Mission,—about how far from the line that separates—about how far from the line that is between what is marked there as Main Street and what is marked as the Mission, about how far was your fence from that?

A. Just a small piece, I think.

Q. Well, give us an estimate of about how far?

A. I couldn't say, probably fifteen or twenty feet, I guess.

Q. I don't think you understand me, Mr. Ripin—

A. You mean from the Mission to the fence we had?

Q. From the old trail up to your fence, about how far was it?

A. Oh, from the trail up to the fence?

Q. Yes?

A. I think about the same as on this side, about three hundred and twenty feet.

Q. Well, about how much did you allow in the front—that is, on the beach side of this tract that you fenced, about how much did you allow there for the Dalton acre?

A. Well, I think it was a hundred or some odd feet.

Q. And then there was the trail, wasn't there?

A. That was with the trail, about 100 feet.

Q. So you think you allowed about a hundred and ten feet for the Dalton acre?

(Testimony of M. Ripin.)

A. No, about a hundred and two—little over a hundred feet, I think.

Q. How much over you don't know—something near that, as frontage for the Dalton acre?

A. Yes, sir.

Q. Now, I understand you to say that at the time you built that fence, there wasn't anything on the property in the way of buildings or tents or persons occupying it, except on the front there where Mrs. Dickinson had those two houses; is that right?

A. That's all there was, the two houses.

Q. When did you say that was, about what time?

A. I came over in November about the 20th, and the property was sold about, I think, the commencement of December, I believe the second.

Q. Something near the second of December?

A. Yes, sir.

Q. The exact date you wouldn't be sure about, but it was—

A. Well, I think now I know it; I think it was something like the second or third.

Q. Of December. Now, do you know Tim Creeden's partner, a man by the name of De Haven?

A. Yes, sir.

Q. Did you ever see him starting in, or in possession of a building, a house on that property, right back of what is called here, marked on this plat as "Ripinski Homestead"? A. Yes, sir.

Q. Did you say anything to him?

A. I went over to Mr. Brie and I asked him; I didn't know who the party was building there, and

(Testimony of M. Ripin.)

I asked him what business they had to build there and he said it was—

Q. Well, never mind what he said.

A. I know I went with Mr. Brie, a party that was there and this party was tearing down and commencing to build, and he said he was putting it up for Carl Wilson and I told him he was on Ripinski's ground; and not alone this, they have torn a piece of the fence out, somebody did, and moved that fence away.

Q. Do you know this gentleman over here, Mr. G. C. De Haven?

A. I don't remember who it was.

Q. Well, whoever it was that was building the house—

A. I just came over from Dyea and happened to be there, and when the boat came in I seen somebody working there right from the boat where I was, and when I came over there I told Brie; my brother wasn't there, and I went up there right quick—I don't remember whether it was Wilson—

Q. Your brother wasn't there at the time?

A. No, he was in Juneau.

Q. He was away then at the time the building of this house was going on?

A. Yes, sir; and I asked him who he was, and he said he was building a house for Carl Wilson, or it was Carl Wilson himself, I don't know.

Q. Well, look at him now and see if you don't recognize him.

A. I don't know whether that's the man or not.

(Testimony of M. Ripin.)

Q. Well, what did he say now when you told him he was on Ripinski's ground?

A. All he said, he was putting it up for Carl Wilson.

Q. Did you tell him that was your brother's land? Objected to as leading.

A. Yes, sir; I told him my brother wasn't there.

Q. Now, you say your brother, the defendant Sol. Ripinski, was away from Haines at that time?

A. Yes, sir, and Mr. Brie had charge of looking after things and that's the reason I went up there with Brie.

Q. Do you know whether—or when your brother came back?

A. I think I left the same day—I didn't stay there.

Q. You left the same day?

A. Yes, sir; Mr. Brie told me he was going to Chilkat—

Q. Never mind what Mr. Brie told you. Can you remember now when your brother came back from Juneau? A. I wasn't there.

Q. You went away then, before your brother came back?

A. I went back to Dyea before he came back.

Q. Who sent you over there, Mr. Ripin, to fence this piece of property—at whose request did you go and build some of that fence?

A. My brother's.

Q. The defendant in this case, Solomon Ripinski? A. Yes, sir.

(Testimony of M. Ripin.)

Q. Do you know who broke that fence down on the trail side as you have testified, and when they broke it down? A. No, sir.

Q. You weren't there then? A. No, sir.

Cross-examination.

By Mr. LYONS.—You say your name is Ripin?

A. Yes, sir.

Q. And you're a brother of Sol. Ripinski?

A. I am, sir.

Q. What did you change your name for?

A. I wanted to be Americanized.

Q. That's the only object you had in changing your name? A. Yes, sir.

Q. When did you change your name?

A. In 1895.

Q. In 1895—after you came to this country?

A. Oh, 1875, I think it was; yes, here is one of my cards—I think it was in 1875.

Q. It was 1875, was it—in Cincinnati, Ohio?

A. Yes, sir.

Q. Isn't it true that you failed in business down there and thought it would be a good plan to change your name? A. No, sir.

Q. You're not the kind of a man that does that kind of business, are you, Pipin?

Objected to as immaterial.

A. I don't need to answer you that kind of a question.

Q. Didn't you ever fail in business?

Objected to as immaterial and irrelevant.

A. Not in business.

(Testimony of M. Ripin.)

Q. Didn't you fail in business, sir?

A. I don't need to tell you that.

Q. You don't? A. No, sir.

Q. All right, sir—that's the reason you changed your name, wasn't it? A. No, sir.

Q. You failed in business and desired to go into business again under the same name of Pipin?

A. No, sir.

Q. You're a fence-builder by trade, are you, Mr. Pipin? A. I can't—

Q. That's been your occupation — building fences? A. No, sir.

Q. Didn't you ever build any fences?

A. I helped to build this one.

Q. Down here in Haines? A. Yes, sir.

Q. Where else did you build any fence in Haines?

A. Nowhere else.

Q. Did you ever work on a farm?

A. No, sir.

Q. You have sold goods most of your life—second-hand goods? A. No, sir.

Q. You're not a second-hand man, then?

A. Never.

Q. Where did you ever build a fence before you built the one you described down at Haines?

A. That's the only one.

Q. That's the only one you ever built?

A. I didn't say I built it—I said I helped building it.

Q. Who superintended the building of that fence? A. I did.

(Testimony of M. Ripin.)

Q. Who else helped you build that fence?

A. A fellow by the name of—white man from Chilkat helped, and there was a half a dozen Indians—that man's name was Adolph, he worked over there at the cannery.

Q. Worked at the cannery? A. Yes, sir.

Q. Where is he now? A. Inside.

Q. Where?

A. I think he's in Fairbanks or Nome somewhere.

Q. How do you know he's at Fairbanks or Nome somewhere?

A. I know he went inside; he said he's got some claims.

Q. When did he say that?

A. At the time I met him.

Q. Told you he had some claims at Fairbanks about six or seven years ago; is that right?

A. Yes, sir.

Q. Don't you know as a matter of fact that such a place as Fairbanks wasn't in existence then?

A. He said inside, or Nome or some place there.

Q. He isn't in there now, is he?

A. Yes, sir.

Q. How do you know he's there?

A. Because he told me he went inside and I haven't seen him come out.

Q. He told you six or seven years ago that he was going into Fairbanks? A. Yes, sir.

Q. Don't you know that six or seven years ago Fairbanks wasn't known to exist and didn't exist?

(Testimony of M. Ripin.)

A. I said inside—Nome, or any of those places.

Q. Now, Mr.—what is your name?

A. Ripin.

Q. Now, Mr. Ripin, don't you know as a matter of fact there you don't know where this man is, and in fact there never was such a man as the one you describe? A. I don't know it.

Q. Well, you say he came there and helped you build a fence?

A. I didn't say he came, he was there too.

Q. Who else worked on that fence beside you and he? A. Good many natives.

Q. Oh—there were a good many natives?

A. Yes, sir.

Q. Where are they, now?

A. I guess they're there yet in Haines.

Q. You haven't any of those natives here to testify to the building of that fence, have you?

A. I couldn't remember them if I seen them.

Q. You remember Adolph, whom you say is inside? A. Yes, sir.

Q. He went some six or seven years ago into Fairbanks?

A. No, he left about a year afterwards, I have seen him in Haines.

Q. And he told you he had claims in there?

A. Yes, sir.

Q. How many years ago?

A. Five years ago.

Q. Didn't you say six or seven years ago?

A. Yes, sir.

(Testimony of M. Ripin.)

Q. Where did he have claims six or seven years ago?
A. It was inside.

Q. When did he locate them?

A. I don't know; he was inside.

Q. And you say there were several natives who helped you to build that fence?
A. Yes, sir.

Q. And you can't remember a single one of them?

A. No, sir.

Q. What part of that fence-building did you do?

A. I helped on it at Isaac's place up there.

Q. I'm not talking about Isaac's place—just wait and understand my question and then answer it—what part of the work of building that fence did you, Pipin, do—you?

A. I didn't do anything; I helped, I said.

Q. What did you do to help?
A. Well—

Q. What did you do?

A. Oh, rolled the wire, or helped like anybody else.

Q. Is that the way you build fences—roll the wire?

A. I wasn't by myself; there was five or six natives.

Q. What did you have to roll the wire for in building a fence—do you really know how to build a fence?

A. I think anybody can build a fence.

Q. How did you build it—what did you do to build it?

A. I helped them bring the wire up, and bring

(Testimony of M. Ripin.)

the nails there, and bring anything they needed for it.

Q. What did they need for it?

A. I guess nails, and they need other things.

Q. That's the way they put on the wire, wasn't it, posts and nails?

A. No, not nails, kind of—I don't know what you call them, kind of hooks.

Q. Oh, they used hooks to build that fence?

A. Yes, sir.

Q. This is all new matter to you, isn't it, Mr. Ripin?

A. Not a new matter to me; no.

Q. Now, Mr. Ripin, isn't it a fact that you didn't do anything towards building that fence?

A. I did.

Q. When did you build it?

A. In December.

Q. What year? A. Year 1897.

Q. When did you begin?

A. I think it must have been the 10th or 12th.

Q. Of December, 1897? A. Yes, sir.

Q. How long did it take you to build it?

A. Well, I was only over there a few days; I didn't build the whole fence, I said.

Q. How long did it take you to build that fence?

A. I didn't build it—I helped.

Q. How long did it take you to build it?

A. Two days I helped over there.

Q. How long did it take to build that fence?

A. Well, I guess it took them—the parties, you mean? I guess it took them two weeks.

(Testimony of M. Ripin.)

Q. And they began about what time?

A. The December tenth.

Q. And Mr. Adolph and yourself and a lot of natives worked in the building of the fence?

A. Yes, sir.

Q. Began about the 8th— A. The tenth—

Q. —of December; and you continued to work—

A. Two days.

Q. And the natives and Adolph continued to work for two weeks thereafter on the fence?

A. Yes, sir.

Q. Do you know Harry Fay? A. Yes, sir.

Q. Don't you know that he was at Haines at that time? A. No, sir.

Q. You don't know he landed there, then, on the 14th day of December of that year?

A. Well, he might; yes.

Q. Well, do you know whether he did or not?

A. No, I don't know.

Q. You don't know anything about it then?

A. No, sir.

Q. Don't you think if Mr. Fay was there on the tenth day of December he could have seen that fence? A. I haven't seen him.

Q. Do you think if Mr. Fay was in Haines at that time— A. If he was, yes.

Q. —on the 14th day of December, 1897, and was there for some time after, that he could have seen that fence?

A. He could if he wanted—maybe he didn't want to.

(Testimony of M. Ripin.)

Q. Do you think all of these other men who have testified could have seen that fence if it had been there? A. If they were there; yes.

Q. You didn't try to hide that fence, did you?

A. No, sir.

Q. Now, how did you get through the timber there, Mr. Pipin—Mr. Ripin, excuse me—how did you get through the timber in building that fence?

A. We had hard trouble—

Q. I don't doubt it a bit—how did you get through it?

A. Had to get in the snow, in and out through it.

Q. How deep was the snow at the time?

A. It wasn't very deep at the time, but after it was deeper some.

Q. How do you know, were you up there where the fence was later? A. Yes, sir.

Q. When did you go to examine that fence again?

A. I was there, I think, the middle of January.

Q. How deep in the ground did you set the posts for that fence?

A. I didn't set any posts; the natives done that.

Q. Oh, they set the posts? A. Yes, sir.

Q. How deep did they set them?

A. I expect two or three feet, probably three.

Q. How did you sink those holes three feet deep, with a spade?

A. Yes, sir; we had a spade and good many things working.

(Testimony of M. Ripin.)

Q. Yes; there's usually a good many things required in digging post-holes, isn't there? Don't you know, sir, that the ground was frozen so hard at that time you couldn't dig post-holes with a spade?

A. With a spade, or—what you call it—I don't know.

Q. You don't remember much of anything at all about the building of that fence, do you?

A. I know, but I can't call it by name.

By Mr. JENNINGS.—Was it a mattock?

By Mr. LYONS.—I wish the record to show that counsel is instructing the witness what to say.

A. I don't remember the name of the tool—one with the point this way and in the middle this way—different thing—

Q. I guess your counsel knows more about building a fence than you do, don't he?

A. I guess he is better.

Q. Was it cold out there when you were building that fence? A. I guess it was.

Q. Was it below zero, Mr. Pipin?

A. No, sir, I don't think it was.

Q. How did you find the lines to run the fence on? A. We run it right straight up there.

Q. I don't have any doubt about that either—straight up; but how did you find the lines?

A. Maybe it ain't in the line yet.

Q. Well, how did you know where the ground was?

A. He had somebody run it up there. We had a

(Testimony of M. Ripin.)

measure and measured it and that's the way we ran the line up, so as to make it straight.

Q. That's the way you came to find Ripinski's ground, is it, with a measure?

A. No, we ran it right straight up.

Q. Well, how did you find his ground in the first place?

A. We measured from the front, and then we knew how to run it straight up.

Q. What did you measure it that way for?

A. Wanted to know how many feet it was.

Q. How do you know that was his ground?

A. He bought it.

Q. How do you know he bought it?

A. I was there.

Q. When? A. December second.

Q. Sure about that, are you?

A. Yes, sir—second or third.

Q. What were you doing over there the second or third? A. I came over to stay there.

Q. I thought you lived at Dyea?

A. I went over there in January.

Q. You said you helped to build this fence, went over there to help on the 8th or 10th, was it?

A. Yes, sir.

Q. And worked there two days?

A. Yes, sir.

Q. Where did you go then?

A. Back to Chilkat over.

Q. Back to Chilkat? A. Yes, sir.

(Testimony of M. Ripin.)

Q. How did you know where Ripinski's land was when you went to work at the fence?

A. On this side was Blind Isaac's, on the side—well, it was on the north side, Blind Isaac's and on the other side of course was the Mission.

Q. How do you know?

A. Wasn't I over there?

Q. Well, you might have been over there—how did you know that was Ripinski's ground?

A. Didn't he buy it?

Q. How do you know he bought—I'm asking you?

A. I was over there.

Q. What was said or done when he bought that land?

A. In the first place, he wanted a witness, Mr. Baldwin, and I went to the store and got Baldwin to sign it. My brother told me what he was going to buy, we talked it over before we bought it. I was talking with my brother the matter over again—

Q. Over again?

A. —the matter over about that property over there at Haines.

Q. Just a moment, now—you say you talked it over again at Haines, and had talked it over before?

A. I mean at the time we talked about buying.

Q. What do you mean by saying you talked the matter over again?

A. You said "again"—I said talked the matter over about buying the ground.

Q. How did you come to talk it over?

(Testimony of M. Ripin.)

A. Well, you see the boats couldn't stop over to Chilkat, they stop over at the Mission, and each time the boat stopped and brought us goods we had to carry them to Chilkat and when the weather was bad of course it was a hard thing to get over—not such a good roads as they have now, and I asked my brother about the two houses and he says it belongs to Mrs. Dickinson, she sold an acre and she claims fifteen acres more and storehouse and warehouse and I told him if he could buy that he could run the goods over there.

Q. You didn't think it would take fifteen acres to land goods on did you?

A. Not to land goods, but the whole thing—I thought it would be worth money.

Q. You knew, as a matter of fact, that she didn't own fifteen acres, didn't you?

A. I did—that's what she told me.

Q. You knew very well, Mr. Ripin, that she didn't exert any acts of ownership over any ground there at Haines except that small tract marked on this exhibit here “Ripinski Homestead”—you know that?

A. My brother told me she has sixteen acres and sold one acre, and has fifteen acres left.

Q. I'm not asking you, sir, what your brother told you—don't you know as a matter of fact that Mrs. Dickinson only improved and actually occupied a small portion of ground there close to the beach, which is now occupied by your brother the defendant in this case?

(Testimony of M. Ripin.)

A. Well, she—well, she didn't improve the whole piece, no.

Q. That's the only part she ever did improve?

A. Yes, sir—not the fifteen acres, no.

Q. And there was no fence around it, was there?

A. There was a piece of fence running between Mrs. Dalton's and the one Ripinski bought.

Q. Up how far did that run?

A. I think that fence run up probably as far as—

Q. As far as Morrison's store?

A. No, not quite that far.

Q. That was the only fence on that tract?

A. At the time he bought it, yes, sir.

Q. And all of the rest of that ground was covered with brush and timber? A. Yes, sir.

Q. And hadn't been in any way improved or cleared?

A. No, that's right; only part of it cleared.

Q. I said—just answer my question; no part of the premises in controversy except the small portion Mrs. Dickinson occupied near the beach, had ever been improved, or cleared or fenced at the time Sol. bought that land?

A. That's right; yes, sir.

Q. Now, when did you last see that fence?

A. In January—you mean, that's the Mission fence?

Q. You know I haven't been talking about the Mission fence?

A. I mean the fence on the Mission side.

Q. I'm talking about the fence you helped to

(Testimony of M. Ripin.)

build—that magnificent fence you and the Indians built?

A. It has been there, I think, yes, sir—after that.

Q. When did you see it last?

A. Well, you see I came back, I think, in about December, 1898, came back to live at Haines, and I run up there a big piece and the fence was there yet.

Q. On which side of the premises—

A. On the side I'm living now; that's on Blind Isaac's side.

Q. On the north side?

A. On the north side.

Q. How much of it was there then?

A. Well the fence is there yet I guess, part of it.

Q. You guess?

A. No; there's part of it up to Carl Wilson's—that's Mr. De Haven.

Q. Where is that with reference to the ground now occupied by Ripinski?

A. Well, up to De Haven's place.

Q. Is that part of the fence you built?

A. Same part, yes, sir.

Q. Sure of that, are you? A. Yes, sir.

Q. The fence to the south side you say you helped build—where is that now?

A. Well, part of it I guess is there yet.

Q. You guess again about it?

A. It is there yet, of course; every year you've got to fix it up again—you can't have a fence stay up all the time; you've got to put posts in, the wire comes sometimes loose and put it back again, you got to

(Testimony of M. Ripin.)

put some kind of work on it, it don't stay there since ten years.

Q. You mean to say you ever improved that fence since you built it?

A. Yes, sir, I'm living on it now.

Q. You're on the fence now?

A. No, sir, not on it—near it.

Q. I'm asking you if you ever improved the fence you say you built on the south side line of this property?

A. Whether I improved it lately?

Q. Whether you ever improved it?

A. Yes, sir, all the time; yes, sir.

Q. When?

A. The last one a few months ago.

Q. On the south side of this tract—a few months ago?

A. Yes, sir.

Q. Did anyone see you doing it?

A. I don't know—I don't know if they seen me.

Q. Didn't you state to Mr. Jennings, your counsel, on direct examination that there was absolutely no fence on the south side of the tract, and there hadn't been any fence there for seven or eight or nine years?

A. No, sir, you're mistaken; there is a fence there all the time.

Q. Your fence is there all the time, the one you built?

A. Yes, sir.

Q. It runs along Main Street, does it?

A. No, sir, not Main Street; I'm speaking about the south side where my house is now.

Q. Where is your house and store?

(Testimony of M. Ripin.)

A. Right near Dalton Street what you call it—right here I guess it is.

Q. You're familiar with this map and plat?

A. I am not—that's the first time I ever seen it yet.

Q. Well, look at it? A. I'm looking at it.

Q. Well, have you familiarized yourself with that map now? A. Yes, sir.

Q. Now, where is the fence you're talking about on there?

A. It runs right straight up this way.

Q. I'm speaking to you, sir, about the south side of those premises?

A. Yes, I'm living on the south side.

Q. That's the north side? A. Let's see—

Q. You're not very well acquainted with Haines at all, are you?

A. The south side is the Main Street, that's got no fence.

Q. Well, when did it last have a fence?

A. Oh, I guess ten years ago, or nine years.

Q. Who built that fence? A. I guess—

Q. Now, I've had enough of your guessing; state a fact or so.

A. A native did, and Mr.—I forget his name, Adolph.

Q. Did you see them building it?

A. Yes, sir.

Q. Didn't you state, sir, you were there only two days, and didn't see them building that fence?

(Testimony of M. Ripin.)

A. No, sir, I came over every other day from Chilkat to Haines, it's only a mile or mile and a quarter and I go over there in about twenty minutes, and I came over there every other day they were working over there, and I went to see what they were doing.

Q. And they were building this fence on the south side of Main Street enclosing the alleged—

A. On the south side of Main Street?

Q. Yes, sir, on the south side?

A. Where my house is there now?

Q. Inclosing the alleged claim of Ripinski?

A. Yes, sir.

Q. Was Harry Fay there then?

A. He wasn't there at that time.

Q. Was Mr. Martin there? A. No, sir.

Q. Was Mr. Creeden there then?

A. No, sir.

Q. How do you know they weren't there?

A. I was there.

Q. Don't you know as a matter of fact that Creeden came there and was there a long time before you were? A. He wasn't on the ground there.

Q. He wasn't on the ground at any time they were building this fence? A. No, sir.

Q. How do you know he wasn't?

A. I was there.

Q. I thought you said you went home every night and came over every day or every other day?

A. He wasn't there, though.

(Testimony of M. Ripin.)

Q. You're pretty anxious to testify in this case, aren't you? A. Whatever you ask me.

Q. You're a brother of the defendant?

A. I am.

Q. Have you any interest in this tract of land with him? A. No, sir.

Q. He owns the whole business, does he?

A. Yes, sir.

Q. Is that the last time you ever saw that fence on the south side of this tract when you saw the Indians and Adolph building it?

A. Last time? No, I seen them when they were done with it, paid them all for it.

Q. Did you see it for two or three months afterwards?

A. I wasn't over there; I only came occasionally; and the side fence is there a long time, but the front fence is broken down pretty soon.

Q. It was there in the spring of 1898, wasn't it?

A. Yes, sir.

Q. And in the summer of 1898?

A. Part of it; yes, sir.

Q. It began to vanish some time in the summer of 1898? A. Yes, sir.

Q. Do you think it all blew away?

A. No, sir, people broke it down.

Q. There's no sign of it there now?

A. No, not now.

Q. And there hasn't been any evidence of it there for how many years do you say?

A. I guess for nine or eight years anyhow.

(Testimony of M. Ripin.)

Q. And you're sure it was there in the summer of 1898?

A. Yes, sir.

Q. And there were several of these people I have named there in 1898, wasn't there?

A. No, sir.

Q. Mr. Fay was there in '98, wasn't he?

A. He may have been in '98, yes.

Q. How tall in 1898 was this fence on the south side of the tract?

A. I wasn't over there; I left Haines or Chilkat about January first and came back again in about 8 or 9 days and stayed there a few days and went back to Dyea; we were building a store at Dyea and I had to be there.

Q. Then when did you go back to Haines again?

A. I came often and on every six weeks or two months.

Q. And you saw that fence along the south side of that tract when you came back, didn't you—along Main Street?

A. Well, yes, I guess I seen it—part of it.

Q. It stood there a year afterwards?

A. Oh, no.

Q. Then it vanished within the year?

A. Didn't vanish; people broke it down, I guess.

Q. Did you see anybody breaking it down?

A. No, sir.

Q. Now, where did you get that wire you built that fence with?

A. My brother brought it down from the Mission, from R—from the Presbyterian Missionary, Mr. Warne was his name.

(Testimony of M. Ripin.)

Q. You're sure he purchased it from the Missionary?

A. He didn't bought it—I heard him say he had to give fifty dollars to either send wire; I don't know whether he bought it—anyhow, he left fifty dollars with him to guarantee he pays for it.

Q. How far was that fence built around the back side of the tract when you left—when you had worked there two days? It was two days you worked there?

A. Yes, sir.

Q. How much of that line of fence was built when you left?

A. A good many—

Q. Well, how much?

A. I couldn't say; a hundred feet, I guess.

Q. You don't know anything about a fence, do you?

A. Yes, sir.

Q. Are you right sure you ever saw a wire fence in your life?

A. Yes, I got one right now.

Q. You built that yourself, I suppose?

A. Well, I have fixed it up all by myself.

Q. Now, how far was this wonderful fence built on the back side of the tract during the two days you worked there?

A. Oh, I don't know; I guess probably—

Q. Up to the sawmill?

A. Oh, no, sir, you can't put it that quick there—probably thirty or forty feet.

Q. It took you two days to build thirty or forty feet?

A. Yes, sir.

Q. How many posts did you put in?

A. I think it was about ten feet apart.

(Testimony of M. Ripin.)

Q. How many Indians did you say you had working with you?

A. Four or five or six, I don't know how many—

Q. Four or five or six Indians and Adolph and you succeeded in building thirty or forty feet in two days?

A. I think about that.

Q. Took you two days to build forty feet of fence?

A. It wasn't exactly forty feet, the first day or two is always some extra work to get your things out, the wire we used there, and we had to locate it and everything else and of course it takes longer the first two days, and after that—

Q. It didn't take long to carry the wire for forty feet of fence, did it?

A. Oh, not very long.

Q. Do you know how far forty feet is?

A. Yes, sir.

Q. You know when you only put the posts in ten feet apart that only means four posts: Do you want to tell any Court, Mr. Ripin, that you superintended the construction of that fence, with six natives and a white man, and it took you two days to build forty feet of fence with the posts ten feet apart?

A. Well, I said I didn't know exactly, but about that much I guess.

Q. Mr. Ripin, have you got any order of Court showing the date your name was changed?

A. Yes, sir.

Q. Where is it?

A. That's the date I gave it to you, that card.

Q. That's not an order?

(Testimony of M. Ripin.)

A. You know the Masonic Lodge won't change your name without any authority—here is something; you don't think you could change it without an order, do you?

Q. I don't know what you can do—

A. This is dated March 9th, 1907—

Q. Yes, that card, that's dated March, 1907; isn't it true you changed your name after your brother failed in business at Haines? A. No, sir.

Q. And you began business under the name of Ripin and company?

A. No, sir; that's fifteen years ago, isn't it—1895—

Q. Why, now, did you change your name?

A. I wanted to be Americanized.

Q. That's the only reason—you wanted to be Americanized? A. Yes, sir.

Q. You thought the other name sounded too Polish, did you? A. Yes, sir.

Q. And you wanted to get as far away as you could from your fatherland, Poland?

A. Yes, sir.

Q. And so you repudiated your name and took the name Ripin? A. I had it done by law.

Q. But you won't state to me whether you failed in business or not, will you? A. No, sir.

Objected to as immaterial and irrelevant, and the witness may answer or not as he chooses.

Q. Did you fail in business in Alaska?

Objected to as immaterial and irrelevant.

A. No, sir.

(Testimony of M. Ripin.)

Q. Since you have become Americanized now, Ripin, you feel you're able to go out and fence up the public domain, don't you?

A. I haven't done it yet.

Objected to as immaterial, irrelevant and argumentative, and impertinent.

Q. Do you think changing your name has helped you to learn how to build fences?

A. No, I guess not.

Q. Now, Mr. Ripin, let me ask you this question: How much of that fence on the back side of this tract is still standing?

A. Yes, I must think how many feet it was—I think about two hundred feet.

Q. Where was that fence standing? I want to get the definite point.

A. Well, I guess it runs about six feet in the street here, then up a hundred and ten feet, runs right this way—well, I don't think it's that long; this is already Third Street, I guess up to here—excuse me, I thought—

Q. The fence is only standing then from a point—where now? A. Where my store is, right here.

By Mr. JENNINGS.—Hold on, now; you just get an understanding of that map before you testify.

A. Well, this is Ripinski Homestead?

Q. Yes, sir.

A. Well, here is the street?

Q. No, sir, that's the beach.

A. Well, the house is about here, I guess, isn't it?

Q. Yes, sir.

(Testimony of M. Ripin.)

A. Well, this is my house.

By Mr. LYONS.—The witness states his house is north of the easterly extremity of the tract marked “Ripinski Homestead.”

A. Yes, that’s right.

Q. Now, from that point, where does that fence commence and where does it end?

A. Well, you know from the store—

Q. Well, now, I wish you would mark on that map first where that fence commences?

A. Well—this is the street, isn’t it?

By Mr. JENNINGS.—No, that’s the beach.

Q. And this is the corner, ain’t it, where my store is, and the fence runs from the storehouse, I think, about 8 feet out this way, runs up this way 105 feet.

By Mr. LYONS.—Now, mark on the easterly corner of that fence with a cross.

A. Let’s see; about here, isn’t it? Here is the store—

Q. Mark it with a cross—now it runs—

A. A hundred and five feet up this way.

Q. In an easterly direction?

By Mr. JENNINGS.—That’s in a westerly direction.

A. Yes, sir, 105 feet to point there—that mark.

Q. Mark the corner now, the westerly corner, with an “O.”

By Mr. JENNINGS.—Do you know the scale of this map, Mr. Ripin?

A. No, sir, I don’t know that scale; give me a piece of paper and I will describe it.

(Testimony of M. Ripin.)

Defendant objects to the request of counsel because it is immaterial and irrelevant, and extremely unfair to the witness to ask him to mark a definite point there without giving him any information about the map.

By Mr. LYONS.—Now, Mr. Ripin, you know where Morrison's Hotel is? A. Yes, sir.

Q. Well, sir, I'm not trying to take any advantage of you—take the map yourself and figure it out? A. Yes, give me now that—

Q. Now, I will call your attention—

A. Yes, sir, all right, sir.

Q. —to the southeast corner of Block No. 1, and I will state to you that that is the Morrison Hotel.

A. Yes, sir.

Q. And I also call your attention—

A. All right, sir—

Q. —to parcel No. 17 in Block 1, marked De Haven and Creeden?

A. Yes, well my lot runs up there.

Q. Well, wait till I get through with my question. Now, where does that fence run with reference to the northeast corner of the Creeden and De Haven lot?

By Mr. JENNINGS.—What fence run?

By Mr. LYONS.—The fence that is still standing—if you let him alone he knows what I mean—the one he has been describing, where is it with reference to that lot?

A. Well, right straight with this line, up to here.

(Testimony of M. Ripin.)

Q. Now, then, make on that map, mark the westerly extremity of that portion of the fence which is still standing? A. Well, right here.

Q. Well, right here.

Q. Mark the point, at the end of it.

A. I will mark it—is that all right?

Q. Right here, is it? Mark it with an “O”—this is his lot? (Witness marks.) It runs, then, from the cross you have marked off, in a westerly direction to the northeast corner of the Creeden lot?

A. Yes, sir.

Q. And that fence is standing there to-day?

A. Yes, sir.

Q. Two wires on it? A. Yes, sir.

Q. And all of the posts are in?

A. Yes, sir.

Q. And none of the wires are down?

A. Well, all of them been down, but we fixed them.

Q. Now, you never fixed or repaired the fence that extends westerly, in a westerly direction from the corner of Creeden’s lot to which you have referred? A. No, not that.

Q. You never repaired that at all?

A. No, sir.

Q. Not from the very day it was built?

A. I couldn’t repair it; they all claimed it.

Q. You never repaired that from the day it was built to this very day, did you? A. No, sir.

Q. Do you know whether that fence is up there now? A. I don’t know.

(Testimony of M. Ripin.)

Q. Now, when was the last time you saw any portion of that fence—I'm not talking now about the fence still standing, but from there on westerly?

A. About a year after, a big piece of it.

Q. That was the last you ever saw of it?

A. Yes, sir.

Q. How far up now, had you built this fence with the natives and Adolph before you left that time?

A. What do you mean before I left?

Q. You said you worked two days in building that fence; about how far had you completed that fence westerly from the point you started, before you left?

A. We run it first in the front, and then run it up.

Q. You run it northerly first? A. Yes, sir.

Q. From where? A. The warehouse.

Q. Where is that?

A. Right in front of here.

Q. Well, how far did you build it westerly?

A. Well, I think it's about sixty or seventy feet up to—

Q. And you built it in a northerly direction how far?

A. Well, I said I didn't know exactly; I think it must have been about forty feet up this way.

Q. How many feet westerly did you build it before you left?

A. Oh—which is west, this way?

Q. Yes, sir.

A. I think I said about forty feet.

(Testimony of M. Ripin.)

Q. How many feet northerly did you build it?

A. Well, that was sixty-five or seventy feet.

Q. Now, where did you get that barbed wire?

A. My brother got it from Mr. Warne.

Q. Where did you find it the day you began to use it?

A. He told me he got it over there, and got the natives to bring it to the place wherever I wanted it.

Q. You got the natives to bring it?

A. I didn't tell them; I guess he did.

Q. Your brother was away at the time, wasn't he?

A. No, sir, he was there when I commenced to build that fence, wasn't away.

Q. He took part then in the building of that fence?

A. No, sir, he came over several times to see what we were doing it.

Q. Who was the superintendent of that job?

A. I think a fellow by the name of Adolph.

Q. Oh, you say now he was bossing the job?

A. Yes, sir.

Q. What did you do? A. I helped it.

Q. What did you do?

A. Bringing the nails up, and getting the wire up.

Q. What did you want nails for?

A. Didn't have nails there on the trees—had to have hooks to build fence with.

(Testimony of M. Ripin.)

Q. Was it very much of a job to carry those hooks up there?

A. I guess it was; it is a big load.

Q. You had to have a big load of hooks to build forty feet of fence with, didn't you?

A. The hooks wasn't just for those forty feet.

Q. How many trips did you have to make to carry the hooks?

A. I don't know—carried them from one place to another.

Q. Did you carry anything else?

A. We needed axes and shovels and picks and so.

Q. What did you need axes for?

A. Had to chop trees down to get posts, don't we?

Q. Did you chop any trees down?

A. I didn't; the natives done that.

Q. Didn't you have the posts ready when you began to build? A. No, just fixing it.

Q. So they proceeded to get the posts out that day, didn't they? A. Some of them; yes, sir.

Q. Who were those natives?

A. Well, Chilkat Indians.

Q. Name a single one of them?

A. I can't name any of them, no, sir—you see I just got there.

Q. You paid them all off, you said?

A. Yes, sir, paid them in the store.

Q. Who kept their time?

A. Well, Adolph was the man—white man.

Q. Who kept the books of the store?

(Testimony of M. Ripin.)

A. Well, I guess my brother did.

Q. I suppose their names were put on the books?

A. No, he didn't keep those names.

Q. How do you know their names aren't on the books?

A. I was helped selling, I ought to know.

Q. Now, who kept their time did you say?

A. Adolph came back each night and said how much we owed them; they all lived at Chilkat, all had to go to their homes and put up buildings.

Q. How often did you pay the natives off?

A. Paid them every night; didn't pay money all to them; some took goods.

Q. When did you pay Adolph?

A. I didn't pay Adolph; my brother did.

Q. He was there during all the building of that fence, was he?

A. Didn't pay him in Haines; paid him over to Chilkat.

Q. Was he at Chilkat all the time?

A. Not all the time.

Q. Were you at Chilkat all the time?

A. Not all the time.

Q. You stated a while ago that you went over from Chilkat about every other day?

A. Yes, sir.

Q. What did you go over to Haines for?

A. Going to see what they were doing.

Q. Adolph was bossing that job, wasn't he?

A. Well, I was fixing up the store and warehouse.

(Testimony of M. Ripin.)

Q. You were? A. Yes, sir.

Q. Every day?

A. Sometimes every day, sometimes every other.

Q. I thought you went out to help the natives build that fence.

A. I looked after them too; yes, sir.

Q. When did they complete that fence?

A. I think the later part of December, 1897.

Q. Did you notify any of those men down there not to build on this tract at the time?

A. The only one was Mr. De Haven.

Q. Didn't you state here this evening on direct examination that you didn't know Mr. De Haven at all?

A. I meant whether he builded the house, whether it was Mr. De Haven or his partner.

Q. You said he tore down the fence—what fence did he tear down, Mr. Ripin?

A. The fence alongside of it.

Q. That ran along the northerly line—or the westerly line— A. Yes.

Q. Just wait till I get the question completed—they tore down the fence that ran along the westerly end line of the Ripinski property?

A. Yes, sir.

Q. Who built that fence?

A. I don't know; I wasn't there when it was built.

Q. What was that fence built for?

A. Well, I don't know what it was built for; I guess to keep the people out of it.

(Testimony of M. Ripin.)

Q. To keep the people off you think. Now, why do you think he fenced the people off the tract marked Ripinski Homestead and not off the other part of the tract to the west?

A. I guess he wanted them there off too.

Q. Well, what did he build a fence for, dividing his premises in that manner?

A. It was a year and a half or two years after it was built around.

Q. The partition fence, then, was built two years afterwards?

A. I don't know at that time; there was no fence there before.

Q. Well, now, just wait until you understand my question—

A. Yes, sir.

Q. And then try and answer intelligently, please—

A. Yes, sir, of course.

Q. You say you're familiar with the Morrison Hotel?

A. Yes, sir.

Q. And you know this line that runs along on the easterly side of the lot that Morrison owns and the lot that De Haven owns?

A. Yes, sir.

Q. And that line that separates their ground from the ground that Mr. Ripinski owns?

A. Yes, sir.

Q. Now, do you know when Mr. Ripinski built the fence along that line?

A. I didn't remember; I wasn't there at all.

Q. Was it built after or before the other fence?

A. It was built after.

Q. Long after the other fence?

(Testimony of M. Ripin.)

A. Yes, sir.

Q. Well, why did Mr. Ripinski want to build that fence along there if he claimed the whole premises on both sides of that fence—I want to know that?

Objected to as immaterial and irrelevant and asking the witness for the reasons operating in the mind of another person.

A. You see, they're building all along here, and he has to protect himself, I expect.

Q. You talked to him about that, did you?

A. No, sir, I wasn't there when that fence was **put**.

Q. How long since have you lived there?

A. I'm living there yet, I guess, going on now 18 years.

Q. You lived there all of that time?

A. No, sir, I lived one year in Dyea.

Q. What year was that?

A. I left there January, 1898,—not Dyea, I mean Chilkat; I went over there and stayed pretty near a year and came back December.

Q. To where? A. To Haines.

Q. And you have lived there all the time since?

A. Yes, sir; I haven't been out exception to coming up to Skagway once or twice or a half dozen times.

Q. I understood you to say you built this fence around this tract of land when?

A. In December, '97.

Q. And you built this fence here—

(Testimony of M. Ripin.)

A. I didn't say I built this; I say I guess my brother had it built on account of he didn't want them parties to come in here.

Q. And he built that two years after the other was built?

A. I don't know, maybe only one year; I couldn't tell you because I wasn't there.

Q. You said just a moment ago you thought about two years?

A. I don't know when he built that; I didn't build it; and I lived over in Dyea—

Q. You only lived in Dyea one year?

A. Yes, sir.

Q. And then came back to Haines and have lived there ever since, haven't you? A. Yes, sir.

Q. Was it there when you lived in Dyea?

A. Yes, sir.

Q. Then he must have built it some time within a year after the other fence was built?

A. Yes, I guess so.

Q. And you have lived there for eight years now?

A. Eight and going on nine years now.

Q. And you have seen people come in there and build their houses and make their improvements?

A. Yes, sir, I have seen them too.

Q. And you know that those people actually occupy the premises that they claim in their complaint?

Objected to as not cross-examination and assuming that the witness knows what's in the complaint.

A. I think so.

(Testimony of M. Ripin.)

Q. You never notified any of those people that Sol. Ripinski claimed that land, did you?

A. No, sir, with the exception of Carl Wilson.

Q. And the reason you notified him was because he was tearing down that partition fence?

A. No, I seen him building when we came in from Dyea and I went over to Brie and told him about it and we went up there and I happened to see the fence down.

Q. Why didn't you go and notify all the other people building on this disputed tract?

A. I don't live in—I didn't happen to see them build.

Q. You have lived there a long time now, haven't you?

A. My brother was tending to that business.

Q. He was away for quite a while, wasn't he?

A. At that time when I happened to come over.

Q. And there were other people building there?

A. He had somebody—Mr. Brie to attend to that.

Q. You thought it was incumbent on you to go and caution this man that was building on Mr. Creeden's lot not to build there any longer?

A. Well, my brother wasn't there and I thought it would be necessary, and I came to Brie and we ran up there.

Q. Why didn't you let Brie attend to that?

A. I wanted to see myself too.

Q. Why didn't you caution all the other people building there at that time to discontinue building?

A. They probably didn't build the same day.

(Testimony of M. Ripin.)

Q. Well, they were building when your brother was away?

A. I wasn't over there; I just happened to come over to Haines that day and coming down here I noticed from the street—

Q. How long did you stay in Haines that trip?

A. I think a day or two.

Q. Isn't it a fact, Mr. Ripin, that the reason you didn't want any more building on the Creeden lot was because they were tearing down the partition fence?

A. No, the fence was down already.

Q. You said, sir, that they tore down that fence and moved it?

A. No, I said somebody tore it down.

Q. That was the reason—you didn't want anybody tearing down that fence?

A. No, sir, I didn't.

Q. Didn't want them to tear down your fence?

Objected to, because there is no evidence that it was his fence.

Q. Well, I will change that—to tear down your brother's fence, then?

A. The fence was lying down already.

Q. You thought those people around there tore it down, didn't you, Ripin?

Objected to as not binding on the defendant.

Q. —and that's the reason you didn't want them to continue building there, because someone tore down that fence?

Objected to as immaterial and irrelevant, and putting words in the witness' mouth.

(Testimony of M. Ripin.)

A. No, I told you I wanted to notify them, that's all.

Q. You didn't want them to continue because they tore that fence down?

A. I didn't say that—I didn't say they tore it down; I said somebody tore it down.

Q. That's the reason you didn't want anybody building there, you didn't want the fences down?

A. Didn't want anybody to build either, I guess.

Q. You're not sure of that then?

A. Yes, I'm sure.

Q. Why didn't you in building that fence, follow this survey, the land that Ripinski claims now?

A. He didn't have any survey down there.

Q. You know, now, that Mr. Ripinski claims this wedge-shaped tract, don't you, being very narrow at the westerly end and wide at the easterly end?

A. Yes, I have heard it.

Q. Do you know? A. No, I heard about it.

Q. Did you know what tract Mr. Ripinski, your brother, owned at the time you built that fence?

A. Yes, sir.

Q. If you did, why didn't you follow the lines as indicated by this survey?

A. This is the line here—that's the line.

Objected to, as a deliberate attempt to confuse the witness, and counsel well knows a surveyor when he goes to survey the land that is claimed as a homestead has got to survey by lines running north and south irrespective of the way the location notice reads.

(Testimony of M. Ripin.)

A. That's it, yes, sir; that's it—just the reason we run the lines straight up.

Q. Now, that's very nice, to have your counsel tell you what to answer—didn't you state, sir, a while ago that the reason you didn't follow the survey was because you didn't know where the lines were?

A. Because we didn't have any survey; yes, sir.

Q. You didn't then know where the lines were when you built that fence?

A. We measured it up.

Q. You didn't know whether your brother's ground was wider at one end than the other, did you?

A. No, sir, we measured it the same on one side as the other side.

Q. You don't know as a matter of fact whether the land he was claiming then is the same as he claims now? A. It wasn't at that time; no.

Q. He has been cutting it down a little, I guess?

A. No, sir, but according to the survey now for a homestead I was told he had to run it kind of—I don't know now which way it was.

Q. Who told you that,—Mr. Jennings?

A. No, sir.

Q. Mr. Jennings just made an objection a moment ago in which he stated exactly what you want to say, didn't he?

A. No, I heard a surveying party themselves when they surveyed the homestead and measured it right from my store.

Q. Now, Mr. Ripin, some surveyor told you that the reason, or that it was necessary to make a home-

(Testimony of M. Ripin.)

stead claim wider at one end than the other—did anyone ever tell you that it was necessary in order to get a patent for a homestead, it was necessary to make your claim wider at one end than at the other?

A. No, he claimed the Mission ground side couldn't be changed otherwise that would run it this way; I heard them say it would have to do anyhow and the Mission side couldn't be changed on account of it had been surveyed; and if it is surveyed one side it has got to run with the survey that is on the north side or south side and on the north side of the tract it is kind of an easterly way—I heard him say that.

Q. You say, sir— A. Yes, sir.

Q. —don't get smart, now,—that according to the rules governing surveyors that it is necessary to have— A. I don't know.

Q. —that surveyors have told you—just wait a minute, now—to have a tract of ground wider at one end than the other in order to get a patent—did anyone ever tell you that?

Objected to as exceedingly unfair to the witness.

Q. Did anyone ever tell you that?

A. Yes, sir; I heard them say the survey on the Mission side couldn't be changed, that you have to run a straight line with the Mission side, otherwise they could have run it straight out to this line; they had to run in kind an easterly way; I heard them say that.

Q. Did the surveyor tell you it was necessary to make this big jog in the ground down here?

(Testimony of M. Ripin.)

A. I have no interest which way they make it.

Q. Did the surveyor tell you it was necessary to make any such—

A. I have no interest in that.

Q. —just wait a minute, sir—did he tell you it was necessary in order to get a patent to this tract of land that you should draw the line from corner No. 2 to corner No. 3 as it has been drawn, and then run easterly from 3 to 4?

A. Excuse me; I don't know I heard them say that,—

Objected to as being a question that only a surveyor could answer, a U. S. Deputy surveyor himself proceeding under the rules and regulations of the Department, and it is unfair to this witness who is not a surveyor at all to ask him such questions as that.

Q. Well, he can state what he heard a surveyor say, whether he is a surveyor or not. Now, Mr. Ripin—

A. Yes, sir.

Q. You didn't know, as a matter of fact, when you built that fence, where Mr. Ripinski's property was?

A. I do.

Q. You know all about that?

A. Yes, sir.

Q. You felt that you knew definitely where each corner ought to be, didn't you?

A. Oh, not exactly the corner; you know there was an Indian by the name of Blind Isaac, who lived here—

Q. Lived where?

A. About here, right here, I guess—excuse me, I think Isaac lived about here, I guess.

By Mr. JENNINGS.—Well, put a little dot there.

(Testimony of M. Ripin.)

A. And my store is right here, and we run the line right up—

By Mr. LYONS.—We will say here is the letter “N” marked, which is Blind Isaac’s, you think he lived easterly where the letter “N” is now marked in that plat? A. Yes, sir.

Q. That is close to the beach? A. Yes, sir.

Q. Now, who told you where your brother’s property was? A. Well, we had it measured up.

Q. Who told you where to go and measure up?

A. I came over with him; he was there too.

Q. How did you find out where the property was?

A. Well, I came over there with him, he showed me—he knew where it was, I guess.

Q. Who? A. My brother.

Q. He showed you where the corners ought to be?

A. Of course, because Isaac’s claimed this side, and we put one post in that many feet off.

Q. How’s that?

A. Where the Dalton Street are now claimed now—there is a street called Dalton Street; Isaac’s is right this side and we run the posts right from here up.

Q. How did you know when to quit, how far to run?

A. We run up as far as where the sawmill is.

Q. What did you run away up there for?

A. We had to take enough ground for fifteen acres.

Q. You just measured off fifteen acres, did you?

A. Yes, sir.

(Testimony of M. Ripin.)

Q. Do you know how many square feet it takes to make an acre? A. No, sir.

Q. How did you know where to put your corners then? A. He had it marked up.

Q. Oh, he had it marked off when you put the fence up?

A. I don't know; not for me he had it marked.

Q. Then you found the marks already there when you built the fence around there?

A. I said I only built part of it.

Q. Did you find the marks there, the corner posts?

A. No, marks all along.

Q. That your brother had put there?

A. I don't know whether he put it there or had it put there.

Q. Where were those posts?

A. One corner where my store is now.

Q. Where was the other?

A. The other was away up near the sawmill.

Q. Did you go up to see that corner?

A. Yes, sir.

Q. When? A. Not many times.

Q. When was the first time?

A. That was in December.

Q. You went out there in December, did you?

A. Yes, sir.

Q. I thought you said a while ago you hadn't been up there in December, that you only ran that way thirty or forty feet?

A. No, you asked me whether in the summer time I was in there and I said no.

(Testimony of M. Ripin.)

Q. You went out there in the winter time, did you?

A. I was out there when I fixed the fence.

Q. I thought you said you only worked two days on the fence?

A. Yes, sir, the balance I came and looked on.

Q. You were out to the sawmill when they built that fence out there, were you? A. Yes, sir.

Q. And saw the corner post there at the time?

A. No, not the corner post—plenty of posts there.

Q. Did you see any corner post marking the northeast corner of the Ripinski tract?

A. Yes, sir.

Q. What were the markings on that post?

A. Well, I think it was a piece of a board, or not a board but about ten by twelve, something like that—

Q. You think it was a ten by twelve?

A. Not 10x12; just a post like.

Q. What kind of a post was it?

A. Regular post from a tree.

Q. What was marked on that post?

A. I don't know any marks at all.

Q. And that was the northwest corner of the Ripinski tract?

A. It was a corner, I don't know which one.

Q. You have lived there for eight years—you know the directions, don't you? A. Yes, sir.

Q. Which is the northwest corner?

A. There's the northwest corner, I guess.

Q. At the sawmill? A. Yes, sir.

Q. Well, the sawmill was there at the time, was it?

(Testimony of M. Ripin.)

A. No, sir, the sawmill wasn't there yet; it was farther out.

Q. It was farther away at that time?

A. Yes, sir.

Q. It has been moved since that?

A. It has been moved *it* once or twice, I think.

Q. The sawmill, then, was farther out at the time you were up there?

A. Nearly to the street then; yes.

Q. The sawmill was there at that time?

A. Yes, sir.

Q. Don't you know as a matter of fact the sawmill wasn't there at all for a year after that?

A. Oh, I say where the sawmill has been.

Q. Well, where did you build the fence from the sawmill, which way did you go then?

A. Up to the Mission ground.

Q. In what direction?

A. Well, down to the beach.

Q. And all of this fence was built in December?

A. Yes, sir.

Q. A two-wire fence, posts set ten feet apart?

A. Yes, sir.

Q. Set in the ground between two and three feet deep?

A. Yes, sir.

Q. How much snow was on the ground at that time?

A. Considerable snow on it; yes.

Q. Who dug those post holes?

A. The Indians—natives.

Q. And there was considerable snow on the ground?

A. Yes, sir.

(Testimony of M. Ripin.)

Q. The ground was frozen pretty hard, was it?

A. No, I don't think it was very hard.

Q. You know you saw them digging those post-holes?

A. Took them a pretty long time to do it; yes, sir.

Q. And the ground was frozen pretty hard, wasn't it? A. Yes, it was frozen pretty hard.

Q. How deep down was it frozen?

A. I don't know—it was frozen, part of it, I guess.

Redirect Examination.

By Mr. JENNINGS.—Mr. Ripin, Mr. Lyons has asked you if it took you two days to build forty feet of fence; I understood you to say that forty feet of that fence was westerly. Do you mean you only built forty feet of fence, or did you include in your work for those two days the part of the fence that you built in front of Ripinski's house to the north and south line? Just the forty feet to the westward, or the part built in front of the house as well?

Objected to as leading, and suggesting the answer desired of the witness.

A. Well, from the warehouse down to the corner.

Q. You first built from the warehouse down to the corner— A. And then up to—

Q. And then the forty feet to the westward?

A. Yes, sir.

Q. Now, Mr. Lyons, asked you several questions about where you were when that fence was being built and what you were doing at Haines and Chil-

(Testimony of M. Ripin.)

kat; I want to ask you if during the time that fence was being built anything was being done with Sol. Ripinski's stock of goods over at Chilkat?

Objected to as not proper redirect examination.

A. We were fixing up the storehouse and warehouse to bring some of the goods over.

Q. And you were actually bringing some of the goods over at the time, weren't you?

Objected to as leading.

Q. Now, Mr. Ripin, answer the question I asked you.

A. Yes, sir, we were fixing up the store.

Q. Were you engaged in the work of helping fix up the store, too?

Objected to as leading.

A. Yes, sir.

Q. Now, Mr. Ripin, you say you were told by the surveyors who surveyed Sol. Ripinski's townsite—homestead claim, that it was necessary to put it in that funny shape there on account of the fact that the Mission line was a surveyed line and well established line?

A. That's what I heard him say.

Object to the question and move to strike the answer for the reason that the question is leading and an unfair quotation of the witnesses' testimony, and he said nothing about a well-established line.

Q. I'll ask you now to state what explanation the surveyor gave of the fact that Sol. Ripinski's surveyed Homestead Claim, No. 573 as appears by Plaintiffs' Exhibit No. 1, what reason did you ever hear the surveyor give for putting it in that shape?

(Testimony of M. Ripin.)

Object to the question for the reason that counsel in his former question has indicated to the witness what he wants his answer to be, and it is a mere subterfuge.

A. Well, he said the line on the Mission side has been surveyed and they've got to run it even with the Mission line and the other line of course run it in kind of an easterly way.

Q. That's the way you understood his explanation?
A. Yes, sir.

Q. You don't know whether that's the law, the rules or regulations governing surveyors or not, do you?
A. No, sir, I just heard him say that.

Q. When you went to building a fence to enclose the tract of land you supposed Sol. Ripinski bought from Mrs. Dickinson, you knew the land was included between the Mission and Blind Isaac's, didn't you?

Objected to as leading.

A. Yes, sir.

Q. And this fence you say you built or helped to build was to inclose a tract of land from the Mission to Blind Isaac's house, and fronting on the beach, and running back so as to include this fifteen acres as near as was told you by your brother Sol. Ripinski, the defendant in this case?

Objected to as leading.

A. Fifteen acres; yes, sir.

Q. Did you know, or did you have any idea of laying out or inclosing any such a tract of land, any tract of land in the shape that Survey No. 573 is ac-

(Testimony of M. Ripin.)

tually made there as shown on this Plaintiffs' Exhibit No. 1?

Objected to as incompetent, irrelevant and immaterial, and leading.

A. Just with marks across, that way.

Q. Was it your idea to build any fence around any such a tract of land as this marked Survey No. 573, with all of those jogs in it?

Same objection.

A. No, sir, right in a straight line as near as we could, of course.

Q. Did you know at that time about the Dalton acre? A. Yes, sir.

Q. State whether or not you included the Dalton acre in the fence you built.

A. No, sir; we didn't fence that off.

Q. Did you purposely leave that Dalton acre out?

A. Yes, sir.

Q. Mr. Lyons has asked you a good many questions about changing your name, Mr. Ripin.

A. Yes, sir.

Q. Who changed your name?

A. The Judge in the court; I got a lawyer and he took it to the court.

Q. It was done in open court, was it?

Q. Before the Judge of the court?

A. Yes, sir; and I think I have got the number of the suit, too.

Q. Number of what?

A. I got two orders from the Court, one of them

(Testimony of M. Ripin.)

to get my insurance, and the other to the Masonic lodge.

Q. That is, you got certified copies of the order?

A. Yes, sir.

Q. Was there any secrecy about it?

A. No, sir.

Q. Was it done behind closed doors?

Objected to as leading.

A. No, sir; it was advertised in the paper, too.

Q. It was advertised in the paper you had made application to change your name? A. Yes, sir.

Q. Where was your name changed?

A. In Cincinnati.

Q. How long ago?

A. Let's see; seventy-five—

Q. Was it 1875 or 1895?

A. I guess it was '95—no, '75.

Q. Well, look at your card and see—never mind whether it was 1875 or 1895—it was before you came to Alaska? A. Yes, sir.

Q. And before you came to Haines Mission?

A. Yes, sir—Oh, here it is—it was 1895.

Q. Mr. Ripin, how long had you been at Haines when you helped to build this fence—how long had you been up around Haines or Chilkat?

A. I came about November 22d.

Q. You came here in November, on the 22d, 1897?

A. Yes, sir; I left—

Q. Wait a moment; don't go so fast—and this fence was built in December of that year?

A. Yes, sir.

(Testimony of M. Ripin.)

Q. Did you know the natives very well in that short time?

Objected to as leading.

A. No, sir.

Q. Did you know the name of any of the natives in 1897 that helped you to build that fence?

Objected to as leading.

A. No, sir.

Q. Did you ever see any of them again to call them by name or know who they were?

A. I couldn't now.

Q. Do you know the last name of that man Adolph that helped you to build the fence?

A. I only know the first name; I don't know the last—I think there is somebody here that knows it.

Q. Do you know whether Grant Baldwin knows it?

A. Yes, sir; I think he knows it—is he here?

Q. He was watchman at the Chilkat cannery, wasn't he?

Objected to as incompetent, irrelevant and immaterial, and leading.

A. Yes, sir.

Q. I understand you to say that after that fence was built you say the fence standing there built—so you know the fence was built all right?

A. Yes, sir.

Q. You saw it even after they quit working on it?

Objected to as leading.

A. Yes, sir.

(Testimony of M. Ripin.)

Recross-examination.

By Mr. LYONS.—Just a moment, Mr. Ripin, don't hurry. You stated in reply to one of Mr. Jennings' questions that you built that fence so as to include a tract making fifteen acres?

A. Yes, sir; it was.

Q. Answer the question—did you state that?

A. Yes, sir.

Q. You built that fence now, so as to include a tract equalling fifteen acres—is that true?

Objected to as unfair, and I insist that counsel has willfully omitted the last part of my question, and ask the stenographer to read the question I asked.

(Referee reads:) “And this fence you say you built or helped to build was to inclose a tract of land from the Mission to Blind Isaac's house, and fronting on the beach, and running back so as to include this fifteen acres as near as was told you by your brother Sol. Ripinski, the defendant in this case?”

A. Fifteen acres; yes, sir.

Q. Now, I ask you, Mr. Ripin, if you didn't build this fence around that tract of land so as to include fifteen acres?

A. Yes, sir.

Q. That's true, isn't it?

A. Yes, sir—I didn't build the whole fence; I helped.

Q. You helped build that fence so as to include a fifteen-acre tract?

A. No, sir.

Q. Now, how did you measure that fifteen acres?

A. I didn't measure it.

Q. Who did?

(Testimony of M. Ripin.)

A. My brother, I guess.

Q. So when you say that, you don't know anything about it? A. No, sir.

Q. You're depending wholly on your brother for that? A. Yes, sir.

Q. And you don't know what area was included within that fence you helped to build?

A. Not exactly; no.

Q. Do you know anything about it at all?

A. I do; yes, sir.

Q. How many square feet constitutes an acre?

Objected to as immaterial and irrelevant and unfair to the witness.

A. I don't know.

Q. Do you know anything at all about how much land is included in an acre?

A. I know, yes, sir; I have to look over it, it has slipped my mind now.

Q. How do you know, then, how much was included or embraced within this fence?

A. I took my brother's word for it.

Q. All you know about it, then, is what your brother told you? A. Yes, sir.

Q. You don't *you* of your own knowledge how much? A. No, I don't.

Q. And you didn't at the time it was fenced?

A. I understood it was fifteen acres.

Q. I say of your own knowledge you didn't know how much was included in that fence? A. No.

Q. And you don't to this day? A. Yes.

Q. And when you say the fence was built to in-

(Testimony of M. Ripin.)

clude fifteen acres, you base that assertion on hearsay—from what your brother told you?

A. Yes, it might have been fourteen acres and three-quarters, I don't know.

Q. You think you have got it tied down now to that near fifteen acres?

A. I don't know—you told me to tell exactly.

Q. And you don't know how many square feet there are in an acre?

A. I knew, but it slipped my mind now.

Q. Can you give approximately how many feet square constitute an acre of ground?

A. No, it's slipped my mind now.

Objected to as immaterial and irrelevant, and an attempt of counsel to confuse the witness.

Q. You have no idea?

A. I have an idea, but it has now slipped my mind, and I can't get it. Well, I will ask you that question, how many feet is it?

Q. I'm not on the witness-stand, sir. Now, seriously, Mr. Ripin, you have no idea—

A. No, I have no idea.

Q. —of how large an area is embraced within an acre? A. I can tell you pretty near.

Q. Well, now, approximately, how many feet square constitute an acre of ground?

A. I think about 300x320 feet.

Q. Three hundred by three hundred and twenty?

A. Or three hundred by two hundred; something like that.

Q. That's as near as you can guess at this time?

(Testimony of M. Ripin.)

A. Yes, sir.

Q. And it's on that hypothesis that you would estimate the amount of acreage included within this fence that you helped to build for your brother?

A. I haven't measured it—somebody else measured it.

Q. And you don't know how many acres there were, only what your brother told you—is that right?

A. I was told there was fifteen acres.

Q. I say, aside from hearsay, you don't know how many acres it included?

A. Well, pretty near, anyway.

Q. Well, how do you know, sir—you never measured it? A. No, sir.

Q. Have you had much dealings with land during the period of your life? A. No, sir.

Q. You never owned a hundred and sixty acres of land in your life, did you? A. No, sir.

Q. You never owned a foot of land until you came to Haines? A. No, sir.

Q. Where did you come from?

A. Cincinnati.

Q. Where did you come from to Cincinnati?

A. From Europe.

Q. Poland? A. Yes, sir.

Redirect Examination.

By Mr. JENNINGS.—Mr. Ripin, Mr. Lyons asked you if you knew what fifteen acres is; did you know Mrs. Dickinson sold your brother the land lying between Blind Isaac's house and the Mission?

(Testimony of M. Ripin.)

Objected to as leading and not redirect examination.

A. Yes, sir.

Q. And you know where that house was, didn't you—Blind Isaac's?

Objected to as leading.

A. Yes, sir.

Q. And you began to measure from Blind Isaac's house, didn't you?

Objected to as leading and also repetition.

A. Yes, sir.

Q. Now, Mr. Ripin, before you built the fence your brother, Sol. Ripinski, had his land there staked out, put up corner stakes?

Objected to as leading and suggestive, and viciously so.

A. He did; yes, sir.

Recross-examination.

By Mr. LYONS.—Did you see your brother staking that out, putting the corner stakes around this property? A. I did not.

Q. How do you know he did it then?

A. We came to it.

Q. How did you know he did it?

A. He was around there with us.

Q. You came to the corner stakes, did you?

A. Yes, sir.

Q. Where did you find them now?

A. On the way out there.

Q. Just name the point there precisely, sir; where you found those stakes?

(Testimony of M. Ripin.)

A. Well, somewheres near here, west of Sixth Avenue.

Q. What kind of a post did you find there?

A. Regular post, I guess.

Q. I am not asking you for your guesses; I'm asking you what you know about this, sir—what kind of a post was that?

A. I guess it was a post from a tree; you know what a post is.

Q. How large a post was it?

A. I don't know it any different from any other posts.

Q. I'm asking you about this particular, identical post—how large a post was it?

A. I don't know exactly—regular post.

Q. That's the best description you can give of it, is it?

A. Yes, sir.

Q. You went and found that post for the Indians, did you?

A. I went all along that line with them.

Q. You hunted it out and found it for the Indians?

A. No, sir.

Q. Who showed it to you?

A. I seen it there.

Q. Who showed it to you?

A. Didn't show it anybody—I looked for a fence and seen it.

Q. Did you see it before the fence was built or afterwards?

A. When the fence was building.

(Testimony of M. Ripin.)

Q. Had the fence been built onto the post at the time you saw it there? A. Yes, sir.

Q. Up to that post? A. Yes, sir.

Q. Right to the corner?

A. Yes, sir; and all around, too.

Q. Oh, that was the corner post of the fence, was it? A. Yes, sir.

Q. And the wire was nailed onto that post?

A. Yes, sir.

Q. And that is the post you say your brother had set there some time before that?

A. I don't know he set it; he was around there to show where to put it.

Q. To show you where the corner post should be set?

A. Not with me, but the parties that put that fence up.

Q. How do you know?

A. I know we came over from Chilkat and I went to the store and he went around with them and showed them where it was.

Q. And you went to that one corner?

A. No, to the storehouse.

Q. Now, you've got back to the store again. Didn't you say you went to the northeast corner?

A. Yes, sir.

Q. And you saw it after the fence had been built up to it? A. Yes, sir.

Q. And it was made the corner post, was it—of the fence? A. Yes, sir.

Q. You understand me now?

(Testimony of M. Ripin.)

A. Yes, sir.

Q. It was made the corner post of the fence?

A. Yes, sir.

Q. Now, how do you know, sir, that post was there before that fence was built?

A. I didn't say I seen it; I seen the fence all around and I seen the corner.

Q. You didn't see that corner post there, then, until after the fence was built?

A. I seen the fence.

Q. You didn't see that corner post there, then, until after that fence was built? A. Yes, sir.

Q. That's true, is it? A. Yes, sir.

Q. You saw it after that fence was built, you mean? A. Yes, sir.

Q. And you didn't see it there before?

A. No, sir.

Q. That's what I thought. Now, you don't know whether there was a corner post there before the fence was built, or not? A. I guess there wasn't.

Q. And, as a matter of fact, you don't know that there was a corner post there at all? A. I do.

Q. You do?

A. Well, what would they put that fence on then?

Q. All right, sir. Now, did you see the southeast corner post? A. Yes, sir.

Q. When did you see that—before the fence was built?

A. No, sir; I seen it after the fence was built.

Q. And you helped build that fence?

A. Yes, sir; I did.

(Testimony of M. Ripin.)

Q. Carried the nails and rolled the wire—what else was there you had, a shovel and adze?

A. Adze; yes, sir.

Q. And you had those post-holes how deep, did you say? A. Two or three feet.

Q. In the frozen ground?

A. Not very hard frozen.

Q. And you dug them with a shovel and adze?

A. Yes, sir; the natives dug them, I said.

Q. How could they dig post-holes two or three feet deep with a shovel and adze?

A. Well, it was dug.

Q. I guess that will do, Mr. Ripin.

**[Testimony of G. A. Baldwin, for the Defendant
(Recalled).]**

G. A. BALDWIN, recalled on behalf of the defendant, testified as follows on

Direct Examination.

By Mr. JENNINGS.—Mr. Baldwin, you know where the Chilkat cannery is with reference to Chilkat—what used to be called the Chilkat Cannery?

A. Yes, sir.

Q. How far is it from the village, Chilkat, where you had your store?

A. It was right in Chilkat.

Q. Did you know a watchman at that cannery by the name of Adolph?

A. That was his first name, I think.

Q. What was his last name?

(Testimony of G. A. Baldwin.)

A. It was a Norwegian name; I think it was Jeeceleyn.

Q. Did you know of that man working in or about Haines in November, 1897—the latter part of November—from that until December, sometime?

A. Yes, sir.

Q. Working for—did you ever see him assisting in the building of a fence there? A. No, sir.

Q. Did you hear him say anything about having built a fence for Sol. Ripinski over there?

Objected as leading and hearsay.

A. Yes, sir.

Q. You heard him state that?

Objected to as the rankest hearsay.

By Mr. JENNINGS.—We don't care for that—I simply wanted to prove to you the existence of Adolph Jeeceleyn.

Cross-examination.

By Mr. LYONS.—You say you never saw this Adolph *Jeeceleggin* building a fence for Sol. Ripinski?

A. I never saw him; no, sir.

Q. And you never saw this fence that Ripin claims that runs along to the north of this tract in controversy?

A. I was never back in there, no, sir, not that far.

Q. Were you back over any of those streets—over Fifth or Sixth avenues there?

A. No sir; I never had occasion to go over there.

Q. Or Fourth Avenue?

A. I don't know where they came to now—there was no streets, then, of course.

(Testimony of G. A. Baldwin.)

Q. When were you over there the first time, to Haines?

A. Well, it was a little while after that deed was signed, after these people commenced staking off lots.

Q. Did you see anybody over there building a fence?

A. These people that were staking their lots were building fences, yes.

Q. Nobody else that you saw? A. No, sir.

Q. How deep was the snow at that time, if you remember, Mr. Baldwin?

A. I don't know what part of the year—

Q. I mean along towards the latter part of December?

A. Well, it was, I should judge, two feet deep at least.

Q. The back, or back side of this tract is pretty well up against the mountain, isn't it—up against the hill? A. No, just rolling there.

Q. Do you know whether or not the ground was frozen hard at that time of the year?

A. Well we had lots of rain that fall, all up through December—I don't know particularly the condition of the ground.

Q. You think the snow was about two feet deep?

A. Yes, sir; the latter part of December.

Redirect Examination.

By Mr. JENNINGS.—How was it in the first part of December?

(Testimony of G. A. Baldwin.)

A. Well, I had no occasion to remember how deep it was.

Q. You don't know anything about that?

A. No, sir.

Recross-examination.

By Mr. LYONS.—Where did you land when you first went to that country?

A. At Chilkat; we got all of our goods there, the steamer landed there.

Q. And you came over this trail immediately after the deed was executed, from Chilkat to Haines?

A. No, the trail don't run that way.

Q. Doesn't that trail run along—didn't it run along where Main Street is now?

A. No, sir; not from Chilkat to Haines.

Q. Was there a trail there? A. Yes, sir.

Q. Didn't you go over that trail shortly after this conveyance alleged to have been made by Mrs. Dickinson to Ripinski?

A. Some time after that; yes, sir.

Q. You didn't see any wire fence to the north of what is now known as Main Street for any great distance, did you?

A. I believe I testified that before.

Q. Did you see any wire fence along the southernly boundary of this tract of land in controversy?

A. Yes, sir.

Q. Where?

A. I testified from Tim Vogel's corner, a wire across there.

Q. Across where? Indicate on the map?

(Testimony of G. A. Baldwin.)

A. It would be the northerly corner of the cleared ground of the Mission.

Q. Tim Vogel's corner is down here in Block No. 2? A. Yes, sir.

Q. Where did that wire extend now?

A. Where you have your pencil there, and across this way.

Q. Well, how far did it extend—across from the Mission to Tim Vogels?

A. Well, I should say I seen it out there probably as far as where Warne's chicken-house is—well, it was the other side of that because I had a lot in there.

Q. That wire fence ran across from the Mission to Tim Vogel's corner, did it? A. Yes, sir.

Q. And then along the side of this block a distance of how far, would you say?

A. I couldn't say—it was out in here somewhere, because I came over it.

Q. There was no fence down by—along the side of Block No. 1—no wire fence?

A. Not that I noticed, no, sir.

Q. What kind of a fence was that one you have described? A. One wire is all I noticed.

Redirect Examination.

By Mr. JENNINGS.—You wouldn't say for sure there was but one wire?

Objected to as leading.

A. Well, it might have been torn down—people had been climbing over it.

Q. That's all you saw—one wire?

(Testimony of G. A. Baldwin.)

A. Yes, sir.

Q. Now, in going from Chilkat to Haines, you don't go out that old trail marked Main Street here at all, do you?

Objected to as leading.

A. No, sir.

Q. You follow the beach on to a point nearly opposite the post—the Military Post and then cut over the hill there and go to Chilkat?

A. You go right through where the Post is now.

Q. This trail, or Main Street as they call it now, would take you away over to one side, wouldn't it, nowhere near Chilkat at all?

A. Diagonally away from it; yes, sir.

Q. Do you mean to say that that fence didn't extend any further than Warne's chicken-house, or that you didn't follow it any further than that?

Objected to as leading.

A. I didn't see it any longer.

Q. You didn't go any further to look?

A. No, sir.

Q. And you don't know how much further it extended?

Objected to as leading.

A. No, sir.

Q. What name have you known the witness that just left the stand, Mr. Ripin—what name have you known him in business by Mr. Baldwin?

Objected to as incompetent and immaterial.

A. Well, when I first knew him I knew him as Ripinski's brother, and so I—

(Testimony of Solomon Ripinski.)

Q. Wasn't he called Ripinski?

Objected to as irrelevant and immaterial.

Q. When he first came to the country he used to sign his name as Ripinski, did he?

A. I do not know.

[Testimony of Solomon Ripinski, for the Defendant.]

SOLOMON RIPINSKI, the defendant in said cause, being first duly sworn, testified as follows on

Direct Examination.

By Mr. JENNINGS.—Mr. Ripinski, when did you first come to Alaska? A. In 1866, sir.

Q. Where did you go, what part of Alaska?

A. That I mean to Haines.

Q. When did you first come to Alaska at all?

A. In 1882.

Q. What part of Alaska did you settle at-- where did you first go when you came to the country? A. I first came to Juneau.

Q. What did you do in Juneau?

A. I stayed in Juneau quite a while, and then I went to Sitka.

Q. Well, how long did you stay in Sitka?

A. In Sitka I stayed about a year.

Q. Then where did you go?

A. I went to the Aleutian Islands.

Q. What place? A. Unalaska.

Q. About what year was it you went to Unalaska? A. In 1884.

(Testimony of Solomon Ripinski.)

Q. What occupation did you engage in—what did you do at Unalaska?

A. I was sent out there by the Bureau of Education to establish Government schools.

Q. To establish Government schools. How long did you stay out to the Westward there?

A. One year.

Q. Did you establish or assist in establishing any Government schools out there? A. I did.

Q. Well, that brings us down to 1885—

A. I beg your pardon; it was 1885 I was at Unalaska.

Q. And you stayed there one year?

A. Yes, sir.

Q. Then what did you do?

A. I was transferred from the Alaska Islands to Haines, or “Dashu,” the Indians called it, at Portage Cove.

Q. There wasn't any mission there at all then?

A. No mission; there was a building, no mission.

Q. Were there any other white people at Portage Cove at that time, Mr. Ripinski? A. Yes, sir.

Q. Who was there? A. Dickinson.

Q. George Dickinson? A. Yes, sir.

Q. What was he doing there?

A. He was a trader, running a store.

Q. Where did he live at that time?

A. In the house which I occupy at present.

Q. In 1886 that was? A. Yes, sir.

Q. Who had preceded George Dickinson in running that trading-post, store there?

(Testimony of Solomon Ripinski.)

A. His widow and son.

Q. No, preceded? Been there before?

A. The Northwest Trading Company.

Q. They had abandoned the land there by the time you got there or transferred it to Dickinson?

Objected to as leading, and the record is the best evidence of any transfer.

Q. What kind of a trader was George Dickinson, who did he trade with there?

A. The natives.

Q. Buying furs and selling goods?

A. Yes, sir.

Q. Well, did you become acquainted with his wife? A. Yes, sir.

Q. Who was his wife?

A. Sarah Dickinson.

Q. State whether or not she was an Indian woman of ordinary, or unusual intelligence.

A. Yes, sir.

Q. Which was it?

A. She was very intelligent, because I used to invite her Sundays to preach to the natives; I was no missionary but I gave her the privilege, she could come to the school-house and preach. She was interpreter for the Presbyterian Church before that.

Q. To interpret from English into Klinget?

A. Yes, sir.

Q. Could she write? A. Yes, sir.

Q. Could she read? A. Yes, sir.

Q. How old a woman was she at the time you got there? Just estimate her age?

(Testimony of Solomon Ripinski.)

A. Oh, about fifty—little over, I guess, at that time.

Q. Well, was there any other white person at Portage Cove other than George Dickinson at the time you first went there?

A. No, sir, not at all.

Q. How close to Haines, or to this little tract of land here did anyone live—any white man live?

A. Nobody lived there.

Q. How close to it—where was the nearest white man outside of you and George Dickinson?

A. I don't believe there was any white man there besides the two of us.

Q. Did you know any white men in Juneau?

A. Juneau was the nearest place; yes.

Q. Now, that was in 1886, as I understand it?

A. Yes, sir.

Q. Now, in 1897—first, when did George Dickinson die?

A. If I ain't mistaken—if my memory serves me right, it was in 1887 or 1888—I think it was 1887.

Q. Did he leave any children?

A. Yes, sir.

Q. What were their names?

A. Billy Dickinson, and the girl Sarah.

Q. Did his wife survive him? A. Yes.

Q. What became of Mrs. Sarah Dickinson after her husband died? A. Billy's mother?

Q. Yes. A. She kept the store there.

Q. At Haines? A. Yes, sir.

(Testimony of Solomon Ripinski.)

Q. How long did she keep that store—did she run the same kind of a store as her husband, trading with the natives? A. Yes, sir.

Q. And what were you doing there during that time? A. You mean after a year?

Q. Yes.

A. I was kind of superintendent of schools, or I taught school till they sent a school teacher.

Q. Who sent you to do that?

A. The Government. Generally after I would establish a school I would teach it until I notified the Department it was established and then they would send a teacher—instruct the teacher to go there and then they would transfer me to another place to establish another school.

Q. Are you a married man, Mr. Ripinski?

A. No, sir, I'm a bachelor.

Q. How old are you?

A. I'm over forty-five—old enough to vote.

Q. You're a little sensitive about your age?

A. Yes, that's right; I have to.

Q. You prefer not to tell how old you are?

A. Yes, sir.

Q. Well, how long did Mrs. Sarah Dickinson continue living in that storehouse that her husband, George Dickinson, was living in when you first came to Haines?

A. Well, she must have kept in business three or four years.

Q. Well, then what did she do?

(Testimony of Solomon Ripinski.)

A. Then she rented the store to Dalton to store away things in and she went to Chilkat to live.

Q. Did you remove from Haines to Chilkat at any time? A. Yes, sir.

Q. When?

A. I stayed one year in Haines and a teacher came—I resided—

Q. You stayed at Haines a year?

A. Yes, sir.

Q. Then what did you do?

A. I resigned, and got a position with the cannery.

Q. Resigned and took a position with the cannery—whereabouts was that cannery?

A. At Chilkat and Pyramid Harbor.

Q. At Chilkat and Pyramid Harbor two canneries in operation? A. Yes, sir.

Q. Well, they were run by white people?

A. Yes, they come up during the fishing season, and I run their store for them.

Q. When you said white people lived no nearer there than Juneau, you meant permanent residents then? A. Yes, sir.

Q. The white people who run the canneries would come up during the fishing season and then they would go back and there wouldn't be anyone there until the next season? A. Yes, sir.

Q. What position did you get in the cannery then?

A. I was kind of officer, overseer like, paying out money for the fish and also run the store.

(Testimony of Solomon Ripinski.)

Q. Who owned the cannery?

A. El Beck and sons.

Q. They run both canneries, did they?

A. Yes, sir.

Q. Where were they from?

A. San Francisco.

Q. Then how long did you stay in the cannery
—working for the cannery? A. Until 1889.

Q. Then what did you do?

A. Then I went below to Portland.

Q. And how long did you stay there?

A. Very short while; went in business there.

Q. And when did you come back?

A. When I came back I opened a store in Chil-
kat of my own.

Q. In Chilkat? A. Yes, sir.

Q. When you came back was Mrs. Sarah Dickin-
son still living there at Chilkat? A. Yes, sir.

Q. I want to direct your attention now to along
about the first of December, 1897—did you have any
business transaction with Mrs. Sarah Dickinson at
that time? A. Yes, sir.

Q. You bought some land from her?

A. Yes, sir, bought some land from her.

Q. Did you know what land she claimed to own
at Haines?

Objected to as immaterial and irrelevant, the deed
or record being the best evidence.

Q. State what lands she claimed to own at that
time—to own at Haines at that time?

Same objection.

(Testimony of Solomon Ripinski.)

A. She told me she had sixteen acres of land there. Now, if you will permit me I will state why I did that—

Q. Go ahead and state it.

A. When I first came to Chilkat the natives were very ugly, they mistreated George Dickinson; they used to come to his store and abuse him—

Plaintiffs move to strike all of this testimony as incompetent, irrelevant and immaterial and not bearing on any issue whatever in this case.

A. —and the natives, after I came there they had respect for me because a gunboat brought me up here, one of the Government cruisers brought me to Chilkat and the white people were always mistreated by the natives before that. So we called together the chiefs and the leading natives and some of the officers gave them a lecture, told them to leave Mr. Ripinski alone—we will leave Mr. Ripinski and we will come for the reports and if it happens there is something wrong goes with him we will come with the gunboat—in fact, they had shelled the town of Killisnoo previous to that and the natives were deathly afraid of the gunboats—they used to call them the “Gum Boots” and whenever Dickinson got into trouble he would send for me and when I came down there the natives used to leave him alone, in fact, they were afraid of me. I found out Dickinson was an Odd Fellow and in fact we locked horns together and was quite good friends, and he had a grown girl. We used to take walks together, and he says he has got sixteen acres and in the com-

(Testimony of Solomon Ripinski.)

mencement of the clearing we have got a garden and he took me along and showed me where the posts were so I would know where that sixteen acres was.

Plaintiffs move to strike the answer as not responsive to the question; and not proper evidence of ownership of land.

Q. Now, this was George Dickinson himself, was it? A. The old man himself; yes, sir.

Q. He told you at that time, in 1884, when you went there, the boundaries of that sixteen-acre tract? A. It was 1886.

Q. That he claimed—the sixteen acres of land?

A. If I ain't mistaken, he claimed for about sixteen acres he was about clearing.

Q. And he showed you the posts of the sixteen acres he intended to clear?

Plaintiffs object to this testimony, first for the reason that any claim made by George Dickinson isn't evidence of ownership in lands possessed by these plaintiffs, and cannot be admitted to prove any of the issues in this case even if he ever made the statement, being purely self-serving declarations.

Q. Now, where were these posts he showed you, these stakes—I'll ask you to point them out as near as you can on this Plaintiffs' Exhibit No. 1.

A. That must be somewheres about here—

By Mr. LYONS.—Indicate, Mr. Ripinski, on the map, so the reporter can get it into the record. To say it's "here" doesn't indicate anything at all.

(Testimony of Solomon Ripinski.)

By Mr. JENNINGS.—I now call your attention to Plaintiff's Exhibit No. 1, which is a map of Haines, or is supposed to be a map of what is called Haines, then called Portage Cove. I call your attention to the space down here inclosed in black marks called the Ripinski Homestead—that's on the east side of the tract. I call your attention also to these directions here, showing which is north, east, south and west. Now, I'll ask you about how far—I'll ask you to locate on that map, on that plat approximately, as near as you can, about where those stakes were if you can locate them?

A. Well, that would be 2,400 feet, somewheres around here, Sixth Avenue.

Q. Along about up to Sixth Avenue, one of them was?

A. Yes, I believe it might be a little farther, might be a little on this line.

Q. Well, whereabouts on the beach were those stakes?

A. Right here in front; high-water mark.

Q. Well, where—indicate it by some point there?

A. Well, say from south to north or north to south.

Q. Is there any mark there—you can describe the mark, the point on the beach there by a "C" and a "D."

A. Well, here is "C" and here is "D."

Q. Now, go ahead; you say he told you about where these stakes were; now you locate them on the map, approximately, where they were.

(Testimony of Solomon Ripinski.)

A. Well, when I bought it I had no trouble, I knew—

Q. Well, we don't want to get at that yet; what else did he say to you?

Objected to as calling for hearsay, immaterial and irrelevant, and incompetent.

Q. That was in 1886, was it? A. Yes, sir.

Q. And you think he died about 1887, you said?

A. Yes, sir.

Q. Now, when you had this deal with Mrs. Dickinson, did you know how much land she claimed over there at Haines?

Objected to as incompetent, irrelevant and immaterial.

A. Sixteen acres, she told me.

Q. She told you it was sixteen acres?

A. Yes, sir.

Q. Did she tell you anything about having sold one acre out of that tract to Dalton?

Objected to as incompetent, irrelevant and immaterial, and not the best evidence, the deed or conveyance being the best and only evidence.

A. Yes, sir.

Q. Well, what did she tell you?

Objected to as calling for hearsay, incompetent, irrelevant and immaterial.

A. That was after, when I was in Chilkat.

Q. I'm talking about this time; when you made the deal?

A. Yes, I was the one made out the deal for the acre.

(Testimony of Solomon Ripinski.)

Q. You made out the deed for her?

A. Yes, sir; Mrs. Dalton came into my place, the postoffice, I was then postmaster, and Mrs. Dickinson told me she has sold an acre of land to Mrs. Dalton, and I wrote out that deed myself.

Q. Did she say what corner of the tract the acre was to come out of?

Objected to as incompetent, irrelevant and immaterial, the deed being the best evidence.

A. Yes, Mrs. Dalton says she wanted that part, that acre.

Q. Which part was that?

Same objection.

A. Marked "C" there, the southeast corner.

Q. Do you remember when that was?

A. It must have been a year before I bought the rest of it.

Plaintiffs move to strike the answer of the witness concerning his having bought the rest of it, as there is no evidence in the record that he ever bought any of it.

Q. Now, you had a business transaction with Mrs. Dickinson about the first or second of December, 1897?

A. Yes, sir.

Q. Please state what that business transaction was?

Objected to for the reason that the transaction concerning which the witness is to testify is in writing and that is the best evidence.

A. I had Mr. Rogers to buy that fifteen acres of land and the improvements from her.

(Testimony of Solomon Ripinski.)

Q. Had Mr. Rogers buy it for you?

A. For me; yes.

Objected to and plaintiffs move to strike the answer of the witness for the reason that the deed, conveyance or whatever instrument it was is the best evidence of what transfer, if any, was made.

Q. Well, why do you say you had Mr. Rogers to buy it for you—if you bought it why don't you say you bought it?

Objected to as leading, and an attempt of counsel to contradict his own witness.

Q. Did you buy it or did you not?

Objected to as leading.

A. I bought it.

Q. Through whom did you buy it?

A. Mr. Rogers.

Q. What, if anything, did you pay her for it?

Objected to as incompetent, irrelevant and immaterial and not the best evidence.

A. In the first place I paid her two hundred dollars.

Q. What did she give you for the two hundred dollars? A. A deed—

Q. No, I mean what did you get in return for your two hundred—

By Mr. LYONS.—I object to counsel interrupting the witness—were you going to say a deed?

A. Yes, sir, and I was going to say some more.

Plaintiffs object to the question as it calls for an answer which should be given by the deed itself; and

(Testimony of Solomon Ripinski.)

oral evidence cannot be admitted as evidence of a transfer of real estate.

By Mr. JENNINGS.—Well, she gave you a deed?

A. Yes, sir.

Q. A deed for sixteen acres of land?

Objected to for same reason as above.

A. Yes, sir.

Q. I now hand you a paper which has been marked Defendant's Exhibit No. 7 for Identification, and I'll ask you if you ever saw that paper before?

A. Yes, sir.

Q. When, where, and under what circumstances did you see that paper first?

A. I made it out myself in Chilkat, Alaska, December 2d, 1897.

Q. Is that the deed that Mrs. Dickinson gave you?

A. Yes, sir.

Q. Do you know her signature?

A. Yes, sir.

Q. Is that her signature to that deed?

A. That's her signature.

By Mr. JENNINGS.—I see this is marked for identification, but I think it was offered before. I now offer this deed marked Defendant's Exhibit No. 7 for Identification in evidence, to make sure if it wasn't offered before.

Plaintiffs object to the deed being received in evidence?

1. For the reason that the description in the instrument itself is not sufficiently definite to enable

(Testimony of Solomon Ripinski.)

anyone to locate the boundaries of the property or land sought to be conveyed.

2. For the reason that said deed further appears to have been acknowledged before the grantee therein, the defendant herein, as notary public.

3. For the further reason that said deed appears to have been recorded with the U. S. Commissioner at Dyea on the 15th day of December, 1897, at a time when such Commissioner at Dyea had no power or authority to record any instrument, and such Commissioner was not at that time an ex-officio recorder for Alaska and the only recording office where instruments pertaining to real estate at Haines could be recorded at that time so as to constitute a constructive or any notice to these plaintiffs or anyone else, was at Juneau, Alaska.

4. That said deed appears on the face thereof to have been subsequently recorded in the recording office at Juneau, to wit, on the 28th day of January, 1899, which date is long subsequent to the accrual of the rights of the plaintiffs in this action and long subsequent to the time when said premises were actually located by the plaintiffs and their grantors.

Q. Now, Mr. Ripinski, I'll ask you to look at that deed again that I have just introduced in evidence, and say whether or not that deed is in the condition so far as the contents of the deed are concerned, as it was when Mrs. Dickinson signed it?

Objected to as incompetent, irrelevant and immaterial.

(Testimony of Solomon Ripinski.)

A. Yes, sir, just as it was—little older, that's all.

Q. Were the words "adjoining the Mission ground on the south and the Indian village on the North" in there when she signed it?

A. Yes, sir; she suggested we put that on.

Q. She suggested that herself?

A. Yes, sir.

Q. Where was that deed signed?

Objected to as incompetent, irrelevant and immaterial.

A. Signed in the postoffice.

Q. At Chilkat, Alaska? A. Yes, sir.

Q. What is meant there—what was the Indian village?

A. The Indian village you see in Haines.

Q. Where is the Indian village in Haines, if you know—how far is the Indian village—what house is the commencement of the Indian village?

A. Well, Blind Isaac's house.

Q. Who is Blind Isaac?

A. He's a native—blind man.

Q. Is he alive now?

A. No, he died about a year ago.

Q. Where did he live—locate on Plaintiff's Exhibit No. 1 as near as you can approximately where Blind Isaac lived?

A. Well, about east—northeast, it's supposed to be.

Q. Just take a pencil and mark there as near as you can about where Blind Isaac lived—mark a square and an "X."

(Testimony of Solomon Ripinski.)

anyone to locate the boundaries of the property or land sought to be conveyed.

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Objected to as incompetent, irrelevant and immaterial.

(Testimony of Solomon Ripinski.)

A. Yes, sir, just as it was—little older, that's all.

Q. Were the words "adjoining the Mission ground on the south and the Indian village on the North" in there when she signed it?

A. Yes, sir; she suggested we put that on.

Q. She suggested that herself?

A. Yes, sir.

Q. Where was that deed signed?

Objected to as incompetent, irrelevant and immaterial.

A. Signed in the postoffice.

Q. At Chilkat, Alaska? A. Yes, sir.

Q. What is meant there—what was the Indian village?

A. The Indian village you see in Haines.

Q. Where is the Indian village in Haines, if you know—how far is the Indian village—what house is the commencement of the Indian village?

A. Well, Blind Isaac's house.

Q. Who is Blind Isaac?

A. He's a native—blind man.

Q. Is he alive now?

A. No, he died about a year ago.

Q. Where did he live—locate on Plaintiff's Exhibit No. 1 as near as you can approximately where Blind Isaac lived?

A. Well, about east—northeast, it's supposed to be.

Q. Just take a pencil and mark there as near as you can about where Blind Isaac lived—mark a square and an "X."

(Testimony of Solomon Ripinski.)

A. (Witness marks on plat.)

Q. That was the beginning now, I understand you to say, the first house of the Indian village?

A. Yes, sir.

Q. Beyond that to the north there were other Indian houses, were there not? A. Yes, sir.

Q. Do you know how far it is from the Mission line to Blind Isaac's house? A. Yes, sir.

Q. About how far?

A. Three hundred and twenty-five feet.

Q. Have you ever measured it?

A. Yes, sir; that is, from the monument.

Q. That big rock—large rock on the beach?

A. Yes, sir.

Q. That's the beginning of the Mission line?

A. Yes, sir.

Q. And Blind Isaac's is 325 feet to the north of that rock, is it, Mr. Ripinski? A. Yes, sir.

Q. That's a well-known, historical landmark around Haines, isn't it—that rock?

Objected to as leading.

A. Yes, sir, that's right.

Q. Well, now, you paid—did you pay Mrs. Dickinson for this property? A. I did.

Q. How much?

A. Two hundred dollars.

Q. Two hundred dollars. Now, was there any dispute between you and Mrs. Dickinson by which she wanted to go back on the contract, the deed, the sale?

(Testimony of Solomon Ripinski.)

Objected to as incompetent, irrelevant and immaterial and leading.

A. Yes, sir.

Q. State what it was.

A. She used to deal with me; there was five dollars account, and I took that off the money, and when she got home she thought I ought to throw that in, and she commenced grumbling and she got that money and brought it back—no, Rogers came back and says she wants five dollars more, and so I gave it to Rogers and he paid her the five dollars.

Q. Now, did she or Billy Dickinson ever claim an additional fifty dollars to the two hundred dollars that you paid her; did she or her son Billy?

A. Later on she came back—

Objected to as leading and immaterial.

A. Later on she came back; brought the money back several days afterwards, and when Rogers came about it I told him and he went to her and he says Billy had some falling out about it, says she ought to have fifty dollars more, and so I purchased the fifty dollars and he took the money to her and it was all right.

Q. What did you do with the two hundred dollars that Rogers brought back?

A. He took it to her.

Q. Did you get any receipt then for the two hundred and fifty dollars you paid her altogether?

A. Yes, sir.

Q. I hand you a paper which I will ask the stenographer to mark Defendant's Exhibit No. 8 for

(Testimony of Solomon Ripinski.)

Identification. (Marked.) I'll ask you if that's the receipt you got?

A. Yes, sir, that's the receipt.

Q. Whose signature is that?

A. That's F. A. Roger's.

Q. No, they are just witnesses. What is the signature on that receipt? A. Sarah Dickinson.

Q. And by whom is it witnessed?

A. F. A. Rogers and John A. Smith, the Commissioner.

Q. John U. Smith, isn't it?

A. Yes, that's right.

Q. Who was John U. Smith?

A. United States Commissioner at Dyea, and afterwards I think at Skaguay.

Q. Now, that receipt is dated December 21st, 1897? A. Yes, sir.

Q. Now, did you get any deed or conveyance from Billy Dickinson for his interest?

A. Yes, sir.

Q. We offer this Defendant's Identification No. 8, the receipt in evidence.

Objected to as incompetent, irrelevant and immaterial, in no way tends to prove any of the issues in this case.

I now hand the stenographer a paper marked "Quitclaim Deed," which I will ask him to mark Defendant's Exhibit No. 9 for Identification (marked), and I'll ask you if that isn't the deed you received from Billy Dickinson. A. Yes, sir.

Q. When did you receive that deed?

(Testimony of Solomon Ripinski.)

A. On the 21st of December, 1897.

Q. At the same time you received the receipt?

A. Yes, sir.

Q. We now offer that deed in evidence.

Objected to for the reason that the description in the deed is so indefinite as not to indicate what property is sought to be conveyed and is not sufficiently definite to enable an ordinarily intelligent person to ascertain the boundaries of the property sought to be conveyed.

2. For the further reason that there is nothing to indicate that Billy Dickinson had any right whatever to sell any land in the vicinity of Haines to the defendant or anybody else; there is nothing in the evidence to indicate that he could by any possibility inherit any right, title or interest in any property at Haines except possibly a small tract actually occupied by his mother at Haines and formerly actually occupied and used by his father, which small tract is conceded to be the premises now actually occupied by Mr. Ripinski, the defendant in this action.

Q. Now, Mr. Ripinski, I forgot to ask you if this first deed I submitted to you, to wit, Defendant's Exhibit No. 7, was executed on the day on which it bears date? A. Yes, sir.

Q. Well, now, then, when you paid him the \$200 and knocked off the \$5 on account and had paid \$50 to Billy Dickinson, did the old lady seem satisfied?

Objected to as immaterial and leading.

Q. Did she complain any more?

Objected to as immaterial and leading.

(Testimony of Solomon Ripinski.)

A. No more, sir.

Q. Has she ever made any complaint to you from that time to the time of her death?

Same objection.

A. No, sir.

Q. Has Billy?

A. Well, Billy did until I paid him fifty dollars, and then he was all right.

Q. So he did, until you paid him the fifty dollars on the 21st of December? A. Yes, sir.

Q. And after that he never made any more complaint? A. Oh, no.

Q. When did Mrs. Dickinson die—she is dead, isn't she?

A. She died in Metlahkahtla; I don't know the date.

Q. How long ago about?

A. Perhaps three years ago; I don't know.

Q. Now, you had some trouble, a lawsuit, with some men you claim jumped your property there, didn't you, one time? A. Yes, sir.

Q. At Juneau? A. Yes, sir.

Q. Was Mrs. Dickinson a witness for you on that trial? A. Yes, sir.

Q. How old a woman was she at the time of that trial?

Objected to as incompetent, irrelevant and immaterial.

A. Well, she must be close to sixty; I don't know exactly; sixty or perhaps more.

(Testimony of Solomon Ripinski.)

Q. Now, after you had purchased this land from Mrs. Dickinson on the second day of December, 1897, state what, if anything, you did towards taking visible possession of it?

A. Yes, sir. Right after I bought it, I went to Rev. Warne as he had a lot of barbed wire coils laying in the snow outside and I asked to buy it and he don't want to sell it but he says if you will deposit fifty dollars you can and if you will return the other wires; and so I got that wires and I got the natives together and myself, and also my brother and commenced to wiring up the place.

Q. Did you indicate to your brother and these natives what land to fence?

A. Yes, I showed them the lines—went with them first and showed them the lines.

Q. Did you show them—where did they began, whereabouts on the beach did they begin fencing?

Objected to as leading.

A. They commenced to fence right here.

Q. Well, for instance, how far from Blind Isaac's house did they commence that fence?

A. Well, they commenced about in the front here.

Q. That don't describe anything—would you say in front of your store? A. Yes, sir.

Q. How did they run then—in what direction?

A. North.

Q. Up to where?

A. Well, to near Blind Isaac's house.

Q. Pretty close to Blind Isaac's house?

(Testimony of Solomon Ripinski.)

A. Well, not too close, but there was a post there; I don't know exactly the place.

Q. Who put that post there?

A. That was in there the first place, when Dickinson was there himself.

Q. That's one of the old Dickinson posts?

A. Yes, sir, and if you look close I believe it is there yet.

Q. And then how did they run that fence?

A. Then they run westerly.

Q. Do you know how far back in that direction that fence was built?

A. If I'm not mistaken 2,400 feet; it might be a few more or less, but somewhere in that neighborhood; we went up there and there was there; I noticed where they were.

Q. Did you intend, or desire to get a tract of land narrower at one end than at the other?

Objected to as immaterial.

A. No, sir, the top and the bottom is the same.

Q. That is, the east line is the same as the west as near as you could make it? A. Yes, sir.

Q. You didn't fence in or intend to fence in any such a tract of the shape the surveyor has made your tract at this time, did you?

Objected to as leading.

A. No, of course not.

Q. Do you know why the surveyor has surveyed you out a piece of land of such a shape as that?

Objected to as incompetent, irrelevant and imma-

(Testimony of Solomon Ripinski.)

terial, and calling for a conclusion of law by the witness.

Q. I mean in such a shape as U. S. Survey No. 573 as the same appears on this Plaintiffs' Exhibit No. 1?

Same objection.

A. I presume; I don't know; but through reading it it has to be taken up that way; you can't go through here because that has been established already.

Q. Did the surveyor tell you that?

Objected to as leading.

A. Yes, sir, he told me that too.

Q. Whether it is true or not you don't know?

Objected to as leading and immaterial.

A. The surveyor says it—I don't know.

Q. Now, when was it you had that fence built, Mr. Ripinski?

A. That was in the commencement of December, right after I made the deed.

Q. Pretty soon after you got the deed?

A. Yes, sir.

Q. What kind of a fence did you intend to build there?

Objected to as immaterial.

Q. What kind of a fence did you build there?

A. There was some fence built there, wire fence.

Q. Posts, poles, and so on?

A. Yes, sir, and barbed wire; two wires.

Q. Running clear around your tract?

A. Clear around.

(Testimony of Solomon Ripinski.)

Q. Do you know what became of that fence?

Objected to as incompetent, irrelevant and immaterial.

Q. Question withdrawn. At the time you had this fence built, was there anyone on this tract of land, any residents? A. Not a soul.

Q. Any tents or buildings on this tract of land?

A. Nothing.

Q. There wasn't anybody even living down in the two houses on the beach, the old store, at that time?

Objected to as leading.

A. That was used as a storeroom by Dalton.

Q. Now, when did you first learn about Harry Fay having a tent on any part of this land?

Objected to as incompetent, irrelevant and immaterial.

A. After I fenced up all around and fixed up that place, I went below to buy a stock of goods for the storehouse—

Q. What storehouse?

A. The Haines storehouse.

Q. Did you contemplate moving over there at the time?

A. Yes, sir; I instructed my brother to take over the stock of goods and fix up and when I came from below I learned there was a tent on my ground, and I went up there to see it myself; there was a tent, so when I went home I sent my brother with a notice to Harry Fay—they told me it was Harry Fay's place—that I claimed that place, and gave him notice to get off of the place and my brother came

(Testimony of Solomon Ripinski.)

back and said Fay told him he better use that for toilet paper.

Q. That was Harry Fay, one of the plaintiffs in this case? A. Yes, that's the same Harry Fay.

Q. Well, now—

Plaintiffs move to strike the answer of the witness as to the notice, as hearsay.

Q. Now, from whom did you get the wire to fence this piece of land, did you say?

Objected to as immaterial.

A. From the Rev. W. W. Warne.

Q. Who was he?

A. He was the missionery there at the Mission.

Q. One of the plaintiffs in this case?

A. Yes, sir.

Q. One of the lot-jumpers?

Objected to as incompetent, irrelevant and immaterial, and there is no evidence in the case to show there was any lot-jumping done by any of the plaintiffs.

A. Yes, sir.

Q. Did you tell Mr. Warne, or did Mr. Warne know what you wanted to do with that wire?

Objected to as immaterial.

A. Yes, I think he did.

Move to strike the answer as merely an expression of the witness' thoughts.

Q. State the fact—you say you think he did?

Objected to as immaterial.

A. Yes, sir, because he objected—he says, “If you deposit fifty dollars I will give you the wire,”

(Testimony of Solomon Ripinski.)

and I had done lots of favors to him before, and he says so I should have it—he didn't like to give me the wire, and I had the money with me and so of course I couldn't say no and I had people right handy to take the wire.

Q. Did he know you were going to fence that tract? A. Oh, yes.

Q. Did you tell him you were going to fence the tract?

Objected to as irrelevant and immaterial.

A. Yes.

Q. Did you tell him you had made that deal with Mrs. Dickinson?

Objected to as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. And that's W. W. Warne, one of the plaintiffs in this case?

Same objection.

A. Yes, sir.

Q. Now, on December 2d, 1897, when this deed was made by Mrs. Dickinson and signed by her, how long—how did it come that Grant Baldwin was called in as a witness?

Objected to as immaterial.

A. In the first place, where was Grant Baldwin, where did he live at that time?

A. He lived a neighbor, in Kohler & James' house, about 100 feet from my place.

Q. Did he keep a store for Kohler & James at that time? A. Yes, sir.

(Testimony of Solomon Ripinski.)

Q. Was Harry Fay at Chilkat at that time?

Objected to as incompetent, irrelevant and immaterial, there is nothing in the evidence to show whether he knows.

A. No, sir.

Q. You were the postmaster at Chilkat at the time, were you? A. Yes, sir.

Q. Had you at that time ever received any mail there for Harry Fay?

Objected to as immaterial.

A. No, sir.

Q. Had you ever seen Harry Fay up to that time?

Objected to as immaterial.

A. No, sir.

Q. Do you remember when Harry Fay came and replaced Grant Baldwin in that store—I don't mean the exact date; do you remember the occasion of his coming and taking charge and Grant Baldwin leaving?

A. I remember when I came back from below Fay was up there commencing to *fixed* up and take charge.

Q. Was he there when you went below?

A. No, sir.

Q. Do you remember now about when it was you went below?

A. Yes, I went below it must have been about the 15th, I guess.

Q. And he wasn't there then? A. No, sir.

(Testimony of Solomon Ripinski.)

Q. This change between Fay and Grant Baldwin hadn't taken place when you went below?

A. After I came back it was changed; yes, sir.

Q. Let me get that clear now; up to the time you went below, Grant Baldwin was in charge of Kohler & James' store? A. Yes, sir.

Q. And that was between the 15th and 18th of December, 1897?

Objected to as leading.

A. Yes, sir.

Q. And when you came back who was in charge of the store? A. I believe Fay was.

Q. Grant Baldwin then wasn't there?

Objected to as leading.

A. I don't remember.

Q. Had you ever seen Harry Fay in or around or about Chilkat up until you came back from below?

A. No, sir.

Q. Until after the 15th of December?

Objected to as immaterial.

A. No.

Q. You were a merchant at Haines then?

A. Yes, sir.

Q. And postmaster at Chilkat?

A. Yes, sir.

Q. Chilkat was a very small village at that time, wasn't it? A. Yes, sir.

Q. How many white people lived there at Chilkat at the time?

A. Very few white—I don't remember now how many—very few.

(Testimony of Solomon Ripinski.)

Q. Now, Mr. Ripinski, in December of 1897 how many white people lived over there at Portage Cove, that is to say, Haines, in December, 1897.

A. Well, perhaps a dozen of people, perhaps.

Q. Well, who were they, if you can remember?

Objected to as immaterial and irrelevant.

A. Well, Spooner was there—

Q. Spooner was there then? A. Yes, sir.

Q. Well, who was he?

A. He was one of the Perry-Humbert Company, but I don't believe—he stopped with Warne, if I'm not mistaken.

Q. W. W. Warne? A. He did.

Q. Now, when did Spooner build the hotel on Dalton's acre? A. That's later on.

Q. But he was there in December, 1897?

A. Yes, sir.

Q. And he stopped with Mr. Warne?

A. Yes, I'm sure he was there, because I went over to see Colonel Alburger and he was there.

Q. When was it that the rush of people came to Haines going in to the Porcupine?

A. It was in the fall of 1898.

Q. What did that rush of people do to your fence?

Objected to as immaterial, irrelevant and incompetent.

A. They broke the fence down.

Q. What did they do to the land you had bought and fenced in? A. They jumped it.

Q. What do you mean by "jumped it?"

(Testimony of Solomon Ripinski.)

Objected to as incompetent, irrelevant and immaterial.

A. Put tents on, buildings, and foundations.

Q. Who were some of the people that came there and put tents and foundations on your land?

A. Well, there was Campbell, Cronen—

Q. E. P. Cronen? A. Yes; and Lane—

Q. That is, M. W. Lane? A. Yes, sir.

Q. Tim Vogel?

Objected to as leading.

A. Tim Vogel, yes.

Q. Warne—did he jump any of your lots?

Objected to as leading.

A. Yes, sir.

Q. Adolph Hogesand?

Same objection.

A. Yes, sir.

Q. Shorty Bigelow?

Same objection.

A. Yes, sir.

Q. He was a kind of ring-leader, wasn't he, of that crowd? A. Yes, sir.

Q. He is in the penitentiary now?

A. Yes, sir.

Q. "Long Shorty" they called him. Did you see Tim Creeden there, was he one of that lot?

A. No, I don't think I seen him.

Q. You don't know whether he was there or not?

A. No, sir.

Q. And Frubeschenck?

Same objection.

(Testimony of Solomon Ripinski.)

A. I might not know his name—there was lots of fellows there I didn't know their names.

Q. That was in the fall of 1898, you say?

A. Yes, sir.

Q. About how many people do you suppose came to Haines in that Porcupine excitement?

Objected to as immaterial.

A. Must have been at least a hundred or hundred and fifty—quite a lot of them passed there.

Q. Did you ever tell Lane that you owned that land? A. Yes, sir.

Q. Before he built any houses?

A. Yes, sir.

Q. Did you ever tell Cronen that you owned that land before he built any house? A. Yes, sir.

Q. Did you ever tell Tim Vogel that you owned that land before he built a house?

A. Yes, sir.

Q. Did you tell "Long Shorty" Bigelow?

A. Yes, sir.

Q. Mrs. Campbell, and Campbell, her husband?

A. Yes, sir, Miss Manning, when she built I was there—her name was Manning.

Q. State whether or not you made it generally known there that you did own that land?

Objected to as incompetent, irrelevant and immaterial; the law provides how it should be made known, and doesn't provide for notice in any such manner.

A. Yes.

Q. Did they pay any attention to your protests?

(Testimony of Solomon Ripinski.)

A. They threatened my life and going to do me up, and shoot me, and kill me. They drove my brother off with a shotgun—Gabe.

Q. Well, now, that was in the fall of 1898?

A. Yes, sir.

Q. State how generally you asserted your claim there—that is to say, state whether or not you told every person you saw building a house there, that that was your land? A. Yes, sir.

Q. Any time you would see a person building a house or foundation, would you go and tell them that was your land?

Objected to as leading.

A. Yes, sir.

Q. Mr. Ripinski, in June of 1903, did you file any Homestead location on this land? A. Yes, sir.

Q. Now, I hand you a paper which I ask the stenographer to mark—or which has been marked Defendant's Exhibit No. 1, Cause No. 547-A, and ask you if that is the homestead location you filed?

A. Yes, sir.

Q. What did you do with that location—have it recorded? A. Yes, sir.

Q. State whether or not you posted any notice of that location? A. Yes, sir.

Q. State how many of those notices you posted?

A. Four.

Q. State where you posted them?

Objected to as immaterial; there is no provision of law for posting notices of homestead, and the posting of notices is no notice to anyone.

(Testimony of Solomon Ripinski.)

A. Four of them, on the four corners.

Q. Of what? A. Of my land.

Q. Did you have a surveyor to go and lay out the courses? A. Yes, sir.

Objected to as incompetent, irrelevant and immaterial and not the best evidence.

Q. What was the surveyor's name?

A. Ruud.

Q. Elias Ruud? A. Yes, sir.

Q. What did you do with one of the notices itself, with one of the notices—one of them, in the way of having it recorded?

Objected to as incompetent, irrelevant and immaterial, and not the best evidence.

A. Recorded.

Q. Whereabouts?

Same objection.

A. Skagway.

Q. Now, is Defendant's Identification No. 1—state whether or not that is the notice you had recorded? A. Yes, sir.

Defendant now offers this notice in evidence.

Objected to on the ground that the notice itself does not comply with the homestead laws in describing the premises sought to be homesteaded.

2. For the reason that the property described in the notice, and the whole thereof, was occupied by the plaintiffs in this action and their grantors as a townsite at the date of the location or the date of filing and recording of this Homestead location

(Testimony of Solomon Ripinski.)

notice, and also at the date of the execution of the notice.

3. For the further reason that the said notice does not describe a parcel of land that could be homesteaded under the Homestead Act of 1903 and shows on its face that it isn't made in good faith for a homestead, but rather that it was made for the purpose of including practically the entire town of Haines.

(Marked in evidence.)

Q. Now, on this paper, Defendant's Exhibit No. 1, appears the following—no; on that notice there doesn't appear to be any date of settlement. State whether or not an amended notice of location was filed and recorded, and posted?

Objected to as incompetent, irrelevant, and immaterial, and not the best evidence.

A. Yes, sir.

Q. I now hand you a paper that has been marked Defendant's Identification No. 3, Cause No. 547-A, L. R. Gillette, Referee, and ask you if that is the amended location notice that was posted and filed for record?

A. Yes, sir.

Q. Whereabouts was that filed?

Objected to for the reason that the record is the best evidence.

A. In Skagway.

Q. Where was it posted?

A. At the four corners.

Objected to the question and move to strike the answer for the reason that the posting of the notice on

(Testimony of Solomon Ripinski.)

the ground isn't evidence of the appropriation of land.

Q. At the four corners, where the other notices were posted?

Same objection.

A. Yes, sir.

Q. As I understand you, then, the other notices were posted around at the four corners by Mr. Ruud?

Objected to as leading.

A. Yes, sir.

Q. Mr. Ripinski, have you been in possession of that tract of land as the owner ever since you bought it?

Objected to as calling for the conclusion of the witness as to the matter of law at issue; the witness may testify where he has been and what he has done, and the Court will construe as to whether or not that amounts to possession.

Q. Mr. Ripinski, what have you done with that land you bought from Mrs. Dickinson since you bought it?

A. I put a fence around, and fixed it up.

Q. Around the whole tract?

A. Yes, sir.

Q. The whole fifteen acres?

A. Yes, sir.

Q. What else?

A. I fixed up the house, and cleared the beach, so boats can land there.

Q. Have you cultivated any part of that tract?

(Testimony of Solomon Ripinski.)

A. I've got a nice garden there, berries, cherry trees.

Q. Well, have you lived on that piece of land ever since you bought it? A. Yes, sir.

Q. Why, Mr. Ripinski, is it that you have never done anything in the way of cultivating or clearing any other portion of that tract except a little part around the house on which you live?

Objected to as incompetent, irrelevant and immaterial.

A. I hadn't the opportunity.

Q. What do you mean by that—hadn't the opportunity?

A. Well, the jumpers got ahead of me.

Q. Got to it before you could do anything?

A. Yes, sir.

Q. And they have had it ever since, have they?

A. Yes.

Q. Some time ago did a man by the name of Ben Barnett transfer any land to you, or give you a deed to any land? A. Yes.

Q. What land was that?

Objected to as not the best evidence.

A. That piece of land from Long Shorty.

Q. The piece that Long Shorty jumped, was it?

A. Yes, Bigelow.

Move to strike the answer and the question on the ground that there is no evidence that the man Long Shorty or Bigelow ever jumped any land.

Q. Now, I hand the stenographer a piece of paper which I ask him to mark for identification Defend-

(Testimony of Solomon Ripinski.)

ant's No. 11 (marked), and I hand you now this paper, Defendant's Exhibit No. 11 for identification, and ask you if that is the deed that Barnet gave you for that lot?

A. Yes, sir.

Q. Who is Ben Barnett?

A. He is a man that lives in Haines.

Defendant now offers this deed in evidence. Objected to as incompetent, irrelevant and immaterial; merely self-serving with reference to this Ripinski tract and cannot be introduced to prove any interest of Ripinski in the tract of land designated the Ripinski tract.

(Admitted.)

Q. I now call your attention to the words in that deed "the following described property: 1 two-story hotel building 25x36, and half of Lot 4 in Block 1 fronting on Main Street which is situated on Sol. Ripinski homestead claim." I'll ask you if you would have accepted that deed if it hadn't recognized your right of homestead there?

Objected to as incompetent, irrelevant and immaterial.

A. No, sir.

Q. I hand you now a paper which I ask the stenographer to mark Defendant's Exhibit No. 12 for identification (so marked). Do you know whose signature it is attached to that deed?

A. Yes, sir.

Q. Whose? A. Bigelow's.

Q. This same man—"Long Shorty"?

(Testimony of Solomon Ripinski.)

A. Yes, sir.

Q. What is that deed—from Bigelow to whom?
Objected to as not the best evidence.

A. Ben Barnett.

Q. That describes the land in the same way,
doesn't it—as situated on your homestead claim?

A. Yes, sir.

Move to strike the answer of the witness for the reason the deed itself will show where the property sought to be conveyed by the instrument is situated.

Defendant now offers in evidence this deed Identification No. 12 and also Defendant's Identification No. 3.

Plaintiffs object to the two deeds, exhibits No. 11 and 12 for identification, for the reason that they are incompetent, irrelevant and immaterial, and the reference in the deeds to the Ripinski Homestead have no binding force or effect upon these plaintiffs.

By Mr. JENNINGS.—I'm offering them to counteract the inference you are trying to introduce here that Sol. Ripinski had been buying property on his own alleged Homestead Tract as you claim.

Plaintiffs further object to the introduction of Exhibit No. 3 for identification for the reason that the same is incompetent, irrelevant and immaterial, and shows on its face that it doesn't describe a tract of land that could be patented or held as a homestead.

2. For the further reason that it embraces nearly the entire of the town of Haines, which is not, and

(Testimony of Solomon Ripinski.)

was not at the date of the execution of the notice of homestead, open to entry.

3. Further, that said deed shows upon its face to have been made in bad faith and for the purpose of acquiring title to land and improvements in the town of Haines.

Q. Now, Mr. Ripinski, I want to ask you the general question: Whenever it has been brought to your knowledge, either by personal observation or by someone else telling you, that somebody—that any particular person was building a structure on this sixteen acres—fifteen acres that you claim, what have you done in the way of advising them of your rights to that land?

A. I generally notified them it was my land.

Q. Some of them you even sent registered letters to didn't you, at one time? A. Yes, sir.

Q. And who was the postmaster at Haines during this time? A. Judge Stout.

Q. W. B. Stout? A. Yes, sir.

Q. And you got registry receipts for a good many of those letters, did you not? A. Yes, sir.

Q. You sent them, and signed my name as your attorney did you not?

Objected to as leading.

A. Yes, sir.

Q. Did you have any authority for doing that?

A. Yes, sir.

Q. Whose authority? A. Yours.

Q. Did you send—do you remember whether you sent such a notice to H. J. Cougar?

(Testimony of Solomon Ripinski.)

A. Yes, sir.

Q. Did you send a registered letter to M. E. Handy? A. Yes, sir.

Q. And to Fred Handy? A. Yes, sir.

Q. Did you notify them in that letter that was your property? A. Yes, sir.

Q. Did you send one to Mr. McCauley?

A. Yes, sir.

Q. And to Mr. Reeder? A. Yes, sir.

Q. Sent him a notice too, did you?

A. Yes, sir.

Q. Is that the receipt you got from the postoffice for that registered letter? A. Yes, sir.

Q. To Mrs. Johnson—you sent her one?

A. Yes, sir.

Q. And one to D. Jerome?

A. That ought to be Craig, Mr. Jennings, he's got the location there; he goes by the name of Craig.

Q. To Mr. John Paddock, did you send him a copy? A. Yes, sir.

Q. One to W. B. Stout, the postmaster himself?

A. Yes, sir.

Q. What lot was he building a house on or improving? A. The one next to Handy.

Q. And you sent him a registered letter and got a receipt for it, did you? A. Yes, sir.

Q. One to Joe Chisel? A. Yes, sir.

Q. Now, Mr. Ripinski, I hand you a paper marked—well, never mind then, I won't offer that now. Now, is there anything else you desire to state

(Testimony of Solomon Ripinski.)

that I haven't asked you with reference to the matter in dispute?

A. Can I make some statement myself?

Q. Yes, sir.

A. I don't know if I stated or not, when I first came there Dickinson showed me this tract of land, and he stated he took that up for the Northwest Trading Company—

Plaintiffs object to the statement of the witness for the reason that it is incompetent, irrelevant and immaterial and from all he has said thus far in his voluntary statement it appears that it is pure hearsay.

—he said he was going to clear it and make this place where he is now—

Plaintiffs move to strike the further part of the answer as hearsay.

—he said it was his now.

Q. Said they had abandoned it and it was his?

A. Yes, sir.

Q. That is, he took it up in the first place for the Northwest Trading Company—

A. Yes, sir.

Q. —how long before that?

A. It was in 1878 he took it up for the company, and now it was his and he was going to have it for himself.

Q. Did he say how long it had been his?

Objected to as calling for hearsay testimony, incompetent, irrelevant and immaterial.

A. He did say—let's see. Since 1884 when he bought out the company.

(Testimony of Solomon Ripinski.)

Q. Did he say what part of 1884 he bought out the Northwest Trading Company—did he say?

Objected to as calling for hearsay testimony, incompetent, irrelevant and immaterial.

A. At the commencement of the year.

Cross-examination.

By Mr. LYONS.—Now, Sol., what is your name?

A. Sol. Ripinski.

Q. You're a brother of Mr. Ripin, aren't you?

A. Yes, sir.

Q. You and he don't bear the same name, do you?

By Mr. JENNINGS.—Now, Mr. Ripinski, just answer Mr. Lyons' questions respectfully and take your time about it; you don't need to get hot about it at all.

By Mr. LYONS.—He can get hot about it if he wants to. You don't bear the same name, do you?

A. No, sir.

Q. He had his name changed?

A. Yes, sir.

Q. Because — you heard what he said — because he wanted to be Americanized? A. Yes, sir.

Q. You're satisfied with your original name then, are you?

Objected to as incompetent, irrelevant and immaterial, insinuating, insulting—a man has the right to the name his father gave him.

Q. I say, you're satisfied with your name—Ripinski?

A. To tell the truth, if I had the opportunity I

(Testimony of Solomon Ripinski.)

would change it; but I always had some commission or something and couldn't change it.

Q. So you want to have it changed?

A. Yes, sir.

Q. You have lived in Haines quite a long while, haven't you? A. Yes, sir.

Q. I believe you're sometimes called "Colonel," are you not, Mr. Ripinski? A. Yes, sir.

Q. How did you come to be called Colonel—just dubbed that by people in Haines, or were you colonel of some regiment? A. Yes, sir, I was.

Q. Where—in Poland?

A. No, sir, in the United States, sir.

Q. Where?

A. In the National Guards of Oregon.

Q. You were colonel of a regiment there?

A. Yes, sir.

Q. Of the State militia?

A. Yes, sir; that's right.

Q. In Portland?

A. Well, some of the troops were supposed to be in Portland, in Albany and Skagway.

Q. Albany and Skagway?

A. No, I mean Albany and Warren.

Q. I believe you said you were over forty-five years old when Mr. Jennings asked you?

A. Yes.

Q. When did you first move to Haines?

A. In 1886 I came to Haines.

Q. When did you first see Harry Fay?

A. In February, 1898.

(Testimony of Solomon Ripinski.)

Q. Where was Harry Fay then?

A. In the store of Kohler & James at Chilkat.

Q. You saw him, or at least his tent, at Haines before that date, didn't you? A. No, sir.

Q. Don't you know as a matter of fact that Mr. Fay went to Haines on December 14th, 1904—

A. I don't know; I didn't see him.

Q. I mean of 1897?

A. I didn't see him.

Q. You heard Mr. Fay testify in this case, sir?

A. Yes, sir.

Q. You heard him testify he went there on the 14th day of December, 1897, and located a lot—didn't you hear him testify that?

A. Yes, he testified that—I didn't see him.

Q. Then you don't know whether he was there then or not? A. No.

Q. He might have been there, and still you not know it? A. Perhaps not.

Q. You said on direct examination that you were familiar with the tract of land included within the exterior boundaries of your alleged homestead—

A. Yes, sir.

Q. When? A. When I seen it.

Q. When did you see it first?

A. When I bought it I went over there.

Q. When you bought it you went over there—and you never knew where the corners were prior to that time? A. Yes, sir.

Q. I asked you when you first saw it, and you said when you first bought it?

(Testimony of Solomon Ripinski.)

A. I saw the corners when I first went there in 1886, when I came first there.

Q. Who showed the corners to you?

A. Mr. Dickinson, he was there.

Q. Why did he take you around the corners of that tract—what occasion did he have to show you the corners?

A. He took me to show me the piece of ground that he was going to clear.

Q. In 1886? A. Yes, sir.

Q. He showed the piece of ground then that he was going to clear, in 1886?

A. That is the time he pointed it out.

Q. And that piece of ground as marked by those stakes included a good deal more than the tract in controversy didn't it? A. I don't know.

Q. Do you know where those stakes were?

A. Yes, sir.

Q. They included more than the tract of ground now in controversy between you and the plaintiffs in this action, did they not? A. I don't know.

Q. You don't know much about it when you come right down to the point do you? And he told you in 1886, showed you the boundaries of that tract of land and told you that he contemplated clearing it; do you know the condition the tract of land was in at that time, as a matter of fact, it would have taken a lifetime to clear it?

Objected to as immaterial and irrelevant, and calling for a conclusion or guess of the witness.

A. I don't know how long it would take.

(Testimony of Solomon Ripinski.)

Q. You know as a matter of fact, sir, he never took you over either, to the westerly corner of that tract don't you? A. No, sir—he did.

Q. He took you over there? A. Yes, sir.

Q. And that's as true as anything else you have testified to in this case? A. He took me there.

Q. The only object he had was to show you this tract which he contemplated clearing—is that it?

Objected to for the reason that it is impossible that the witness know what his object was.

A. I was there—you wasn't there.

Q. Answer my question, sir?

A. I say I did see it.

Q. You say that Dickinson took you over to this corner, and the only purpose he had in taking you there was to show you a tract of land he contemplated clearing some time in the future.

Objected to as immaterial, and not a proper statement of the witness' testimony, the witness not having testified he knew what Dickinson's purpose was.

A. He showed me that piece of land.

Q. Did he say why he showed you those corners?

Objected to as immaterial and irrelevant.

A. Well, there was no other white man there, and he showed me what he had—says he was something to me.

Q. Very well. Now, where did he start from when he showed you that big farm?

A. He started right here, there was a little Indian trail—

(Testimony of Solomon Ripinski.)

Q. He went out Main Street?

A. Wasn't any Main Street then.

Q. Well, along the Indian trail now occupied by Main Street? A. Yes, sir.

Q. How far did he go?

A. Well, quite a distance, up to Sixth Avenue somewhere—there was no Sixth Avenue then.

Q. Up to this place? A. Yes, sir.

Q. Did he show you a corner post there?

A. Yes, sir.

Q. How was it marked?

A. Well, it was a square post; I didn't see any marks. I wasn't particular to look at the marks, there was some post there all right.

Q. How high was that post?

A. About four feet.

Q. Where did he take you from there?

A. Around over here somewhere.

Q. (By Mr. JENNINGS.) Designate the place by some mark?

By Mr. LYONS.—Over here, Sixth Avenue northerly, was it? A. Yes, sir.

Q. Then where?

A. Over some place to Dalton street there.

Q. Over to Dalton Street?

A. That wasn't that way then, of course.

Q. Where the northwest corner of Block No. 5 is now located? A. I suppose so.

Q. Did you find a corner post there?

A. Yes, sir.

Q. A post newly put in, was it?

(Testimony of Solomon Ripinski.)

A. No, sir, an old one.

Q. That looked like an old one there?

A. Yes, sir.

Q. Might have been there for ten or fifteen years?

A. Perhaps.

Q. And where did he take you from there?

A. Well, there was all trees here; we went kind of zigzag through there.

Q. Through the timber?

A. Yes, sir.

Q. It was all covered with timber in those days?

A. That's right.

Q. The timber was dense too—located very thickly on the ground, wasn't it?

A. Not very thickly.

Q. Large timber was it?

A. Yes, sir, large timbers.

Q. What time of the year did he take you around there?

A. I presume it must have been in the spring or summer time; there was no snow on the ground.

Q. And you say these posts looked to be about ten or twelve years old?

A. Old posts; yes.

Q. And he told you he staked out that land for the purpose of clearing it?

A. He staked it for the Northwest Trading Company in 1878.

Q. Did that company ever appropriate that land?

Objected to as calling for a conclusion of the witness.

A. Well, they used the front part of it.

(Testimony of Solomon Ripinski.)

Q. Yes, the front part—about the same size as you have appropriated on here—marked Ripinski Homestead?

A. Yes, something like that.

Q. What did they have down there?

A. Well, they had a garden.

Q. What else? A. Warehouse.

Q. What else? A. Storehouse.

Q. Anything else? A. Woodyard.

Q. Anything else?

A. I don't know of anything else.

Q. So that's the way you first became familiar with the holdings of George Dickinson, was it?

A. Yes, sir.

Q. You were a great lover of mountain climbing at that time, were you, Mr. Ripinski?

Objected to as immaterial and irrelevant and an attempt to confuse and embarrass the witness.

Q. You loved mountain climbing about that time, didn't you?

A. Yes, certainly—I like it yet.

Q. You were a great hunter? A. Yes, sir.

Q. Quite a man to travel through the mountains on these little pleasure excursions?

A. Yes, sir.

Q. You have great difficulty in finding men to keep up with you, don't you?

Objected to as immaterial and irrelevant and an attempt to confuse and embarrass the witness.

Q. Well, how about it?

(Testimony of Solomon Ripinski.)

A. Yes, I like to climb mountains; I'm a little clumsy now; used to when I was slim.

Q. As a matter of fact, you spend most of your time now in your little store now selling second-hand goods, more than *than* in surveying, don't you?

A. No, sir, I never sold second-hand goods.

Q. You're a merchant at Haines?

A. Yes, sir.

Q. You have followed that calling ever since you came to Alaska, for yourself or somebody else, haven't you?

A. I worked for somebody else too, yes.

Q. Now, you say you bought this tract of land from Mrs. Dickinson; what did you want that tract for then, Sol.?

Objected to as immaterial and irrelevant.

A. What I wanted it for?

Q. Yes.

A. Why, people like to have land, to have property.

Q. What did you want it for in that shape, that size, the way it is defined on this exhibit?

A. I suppose that's the land he took up.

Q. You were running a little store down on the beach, weren't you—you didn't have any need of this virgin forest back here for the purpose of enabling you to maintain a small store?

Objected to as immaterial and irrelevant.

Q. You didn't need all that as a portion of your trading site?

A. Well, it would come pretty handy to have.

(Testimony of Solomon Ripinski.)

Q. What did you want it for, I asked, in connection with your business there?

A. Well, I might want to have a milk ranch there.

Q. You hadn't bought any cows of Mrs. Dickinson, had you? A. Not yet.

Q. Not even to this day? A. No.

Q. You never started a milk ranch there—did it dawn on you at the time you made this purchase that maybe you would go into the dairy business?

A. Yes, sir.

Q. Were you ever in the dairy business before?

A. No.

Q. You don't know anything about the dairy business now, do you? A. No.

Q. And the only purpose you had in buying that land was, that you thought you might at some time in the indefinite future need it for a milk ranch?

Objected to as immaterial, irrelevant, and a misquotation of the witness' testimony, unfair to the witness, and an attempt to embarrass and confuse him.

Q. Is that right? A. Yes, that's right.

A. Yes, that's right.

Q. You didn't need it in your—in maintaining your little business you had down on the beach at that time, did you?

Objected to as immaterial and irrelevant and for the further reason that a person has a right to buy property for any purpose he wants to.

Q. I say—you didn't need all of this disputed tract of land for the purpose of enabling you to

(Testimony of Solomon Ripinski.)

maintain the business you had embarked in and were controlling and operating on this small tract marked "Ripinski Homestead" on this exhibit, did you?

A. Oh, I need it, certainly; I might have a garden, a portion of it; fifteen acres isn't much for a person to have.

Q. I thought you said awhile ago you bought it thinking you might need it for a milk ranch?

A. I haven't bought the cows yet.

Q. Couldn't you find any?

A. Where shall I put them—feed them on top of the rocks? People have got to have land for cows.

Q. Did you expect to feed them on this land?

A. Yes, sir.

Q. Now, Mr. Ripinski, did Mrs. Dickinson ever describe this land to you herself?

A. Yes, she did.

Q. When?

A. The time when I first came there.

Q. She took you out to those corner stakes too?

A. Yes, sir.

Q. You and she went out to the corner stakes, did you? A. I went out there.

Q. I asked you if she took you out and showed you the corner stakes?

A. Yes, she took me out, too.

Q. When? A. When I bought it.

Q. You weren't sure, then, that you remembered the stakes from the description George Dickinson gave you? A. Yes.

(Testimony of Solomon Ripinski.)

Q. She took you out alone, did she?

A. No, Billy went along.

Q. What time of the year was that?

A. I suppose that's also in the fall, perhaps.

Q. I'm asking for your testimony, not your supposition.

A. Before I was contemplating buying it.

Q. Mrs. Dickinson took you and showed you the corner stakes before you bought it?

A. Yes, sir.

Q. And you knew all the time that Mrs. Dickinson had never done a solitary thing with that property, and George Dickinson had never done anything with it?

A. They cleared part of it.

Q. They cleared the part now claimed and owned by yourself and represented on this exhibit as the Ripinski Homestead—that's the only part they cleared?

A. That's what Dickinson said—

Q. Never mind what he said—that's the only part ever cleared by them?

A. At that time, yes, sir; they expected—

Q. I'm not asking you what they expected to do, but what they actually had done. A. Yes, sir.

Q. That is all the ground they had cleared on that entire tract—is the small piece you now occupy to the easterly of Block No. 1—isn't that right?

A. Yes, sir, I presume so.

Q. You are familiar with the entire tract, weren't you? A. Yes, sir.

(Testimony of Solomon Ripinski.)

Q. You say you circumvented the entire tract on two or three occasions?

A. Yes, sir, lots of times.

Q. And you know that no other improvements or clearing had been made on that portion of the land by anyone at the time you purchased it, excepting what had been done close to the beach and east of Block No. 1?

A. Yes, sir.

Q. And the remaining portion of that tract was then like any other portion of the forest?

A. Yes, sir.

Q. I now call your attention to Defendant's Exhibit No. 7, which purports to be a deed from S. Dickinson to yourself. You took the acknowledgment to that deed?

A. Yes, sir.

Q. You were a notary public at that time?

A. Yes, sir.

Q. And you had the power to acknowledge deeds even those made to yourself, didn't you?

A. In fact, I believe I was the first notary public in Alaska — Governor Shakley came up and he wanted me to be a notary, and said I was the first one—I put that seal on to see how it looks—that's the first time—

Q. The purpose, then, of acknowledging this deed before yourself was to see how it would look on paper as a notary public—your name and seal?

A. Yes, sir, there was no other notary in Alaska.

Q. Mr. Ripinski, I don't want to deprive you of the honor of being the first notary in Alaska, but I want to know if you thought at that time you could

(Testimony of Solomon Ripinski.)

acknowledge a deed in which you yourself were the grantee—did you think you had the power to do that at the time?

Objected to as incompetent, irrelevant and immaterial, and for the further reason that the deed would be a good deed without any acknowledgment at all and there is no law even now on the statutes prohibiting a man from acknowledging a deed before himself.

A. I didn't think much about it.

Q. I now call your attention to the margin of this deed on which is written "Adjoining the Mission ground on the south and the Indian village on the north." That was written in there after the body of the deed was drawn? A. Yes, sir.

Q. And after the signature to the same was attached by S. Dickinson? A. No, sir.

Q. You're sure of that, are you?

A. Yes, sir, I'm sure.

Q. If that signature hadn't been put there before, sir, why didn't you put that clause below there—you had plenty of room?

A. I thought after, I didn't know exactly if I would bring it down here, so I put it over there.

Q. You're sure that was made before she signed it? A. Yes, sir.

Q. And of course Mrs. Dickinson signed it before the witnesses? A. Yes, sir.

Q. Will you explain now to the Referee why you didn't write those two lines which appear there on the margin, in the body of that instrument before

(Testimony of Solomon Ripinski.)

Mrs. Dickinson signed, instead of writing them on there on the margin and after she signed?

A. Well, I first wrote it here and she signed it, I guess.

Q. Oh, I understand what you guess about it; I'm asking you why you think it was necessary to put that on the margin there?

A. Well, the thing, I couldn't put it in here, it wouldn't reach.

Q. Well, her name isn't there? A. No.

Q. The witnesses' names weren't there?

A. No, sir.

Q. Well, wasn't there plenty of room then?

A. Well, you see that signed there, I thought it wouldn't go.

Q. What did you put in "signed" there for, what is the word for?

A. That means it is signed by somebody's name.

Q. You thought it was necessary to have the word "signed" there as a proof that it had been signed by someone? A. Yes, sir.

Q. And that if you wrote the word signed there, it would be proof that she actually signed it?

A. Everybody generally puts signed there; that's generally the way it is written.

Q. And in that deed is the best description of this land you could give, notwithstanding the fact you knew where the exact corners were?

A. Yes.

(Testimony of Solomon Ripinski.)

Q. And you knew the approximate distance from one corner to the other as you have stated?

A. Yes, sir.

Q. Why didn't you say in preparing that deed, starting on the beach at a certain corner in the vicinity of Blind Isaac's house, thence running westerly to Corner No. 2, thence southerly to Corner No. 3, and thence running along the Mission line to the beach, thence in a northerly direction again to Corner No. 1 the place of beginning?

A. If I had any idea the jumpers would come after it I would take it to an engineer.

Q. You're a school-teacher, aren't you—a man of some education?

A. I have superintended schools.

Q. You have some education, haven't you?

A. Some.

Q. You know something about the description of lands, don't you?

A. I don't know at that time perhaps.

Q. Well, when you bought the land, what did you do then? A. I fenced it up.

Q. You said you weren't expecting any jumpers when you drew up that instrument? A. No.

Q. But you immediately thought it was an uncommonly wise thing to fence it in after you purchased it? A. Yes, sir.

Q. And you proceeded to fence it—when did you begin?

A. Well, perhaps the next day after I bought it.

Q. And perhaps the next month?

(Testimony of Solomon Ripinski.)

A. No, the next day.

Q. On the third day of December?

A. It might be the third.

Q. You heard your brother testify it was along about the tenth of December, didn't you?

A. Perhaps he was fencing one side and I was fencing the other side.

Q. Then he started on one side and you on the other? A. Yes, sir.

Q. He testified that he and the natives and one Adolph were working there altogether?

A. That's correct.

Q. And you were working on the other side?

A. Yes, sir; I had also some natives on the other side.

Q. What part of the building of that fence did you engage in, Mr. Ripinski?

A. The southern part, the southwest part.

Q. What part of the work did you do?

A. Chopped down some trees, I suppose.

Q. What did you chop down trees for?

A. We put the fence on some of the trees, little saplings, small trees.

Q. How much snow was there on the ground when you were building that fence?

A. Well, there was some snow.

Q. How much I asked?

A. In the woods farther there wasn't hardly any; on the outside there was considerable snow, on the trail.

Q. The ground was frozen, was it not?

(Testimony of Solomon Ripinski.)

A. In some places it was hard and some places not.

Q. How did you dig the post-holes?

A. I'm telling you, we chopped some trees down—

Q. How did you dig the post-holes to put the posts in?

A. The trees was in the ground already; chopped down small trees and put the wires on.

Q. You didn't need then to put in any posts—put the wires on the trees?

A. We made posts out of the trees—chopped them down.

Q. You chopped them down then?

A. Just topped them, and smoothed them round.

Q. And then you attached the wire to the trees?

A. Yes, sir, if we could find them.

Q. So you didn't have to dig any post-holes at all?

A. Some places we did; otherwise if there was any trees in the road.

Q. Did you dig many post-holes?

A. I don't remember how many; I didn't have time to count them.

Q. Never mind—you were fortunate then in finding trees about every place you needed a post?

A. Perhaps.

Q. You heard what your brother testified about that? A. I don't know whether I heard it.

Q. How did you dig those post-holes?

A. Well, some of them were—

(Testimony of Solomon Ripinski.)

Q. How did you dig those post-holes?

A. With a pick and adze.

Q. You dug them with an adze?

A. Yes, shovel and pick.

Q. And pick—and shovel you say?

A. Yes, sir.

Q. Did you succeed pretty well in digging those holes with a shovel and adze when the ground was frozen?

A. Well, sometimes when snow is on the ground it isn't frozen very far.

Q. Well, your brother testified it was frozen?

A. In some parts, yes.

Q. And you dug the holes with an adze?

A. With a pick.

Q. How deep did you set the holes in the ground?

A. I don't know how many feet.

Q. How many feet, do you think—how deep?

A. Two or three feet, I suppose.

Q. And you did that with a pick. Don't you know you can't go two or three feet down with a pick?

A. Why not?

Q. When you have a post-hole the size usually dug for posts, how can you go two or three feet into the ground with a pick?

A. Yes, sir, I pick it and take it out with the shovel and put rocks around.

Q. What did you put rocks around for?

A. To keep it solid.

Q. Now, how did you dig those post-holes, Mr. Ripinski—how did you, candidly?

(Testimony of Solomon Ripinski.)

A. The best way I could.

Q. As a matter of fact, you don't remember anything about how they were dug at all?

A. Yes, sir, I do.

Q. As a matter of fact you know you never built a fence around that tract at all?

A. Yes, sir, I do.

Q. You know very well, sir, you never did build a fence around that tract of land?

A. Yes, sir, I did.

Q. And you know nobody else ever saw that fence around there besides you and your brother?

A. Good many didn't want to see it.

Q. Now, who were the natives that helped you in the building of that fence?

A. Quite a number of natives; yes.

Q. Name one of them?

A. We had some natives at the last lawsuit was with us in the case, they helped build the fence.

Q. What are their names—name one of them?

A. One was Willy.

Q. You're about as well acquainted with the natives in Haines as anybody in this country, aren't you?

A. Yes, sir, that's true.

Q. Yet you're not able to recall the name of a single Indian that helped build this wonderful fence around the tract in dispute?

A. Yes, sir, Willy, he was Bill Fox's brother in law, he is dead now.

Q. Willy is dead, now? A. Yes, sir.

Q. Where is Fox? A. He is here.

(Testimony of Solomon Ripinski.)

Q. Nobody else that you can recall but Willy, and he is dead—of the natives?

A. John Jack.

Q. Where is John Jack? A. He is dead.

Q. Anybody else?

A. We had lots of them, pretty near all of the natives have died out, there was an epidemic.

Q. Anybody else that you can recall?

A. We had Adolph.

Q. Well, Mr. Ripinski, did the epidemic affect your witnesses any worse than anybody else?

A. No; the witnesses, the natives died.

Q. All the natives that helped build that fence are dead? A. I don't know.

Q. You don't know where they are, do you?

A. I do not.

Q. And you have none of them here?

A. No, sir.

Q. When did you last see any portion of that fence standing? A. In the fall of 1898.

Q. Haven't seen any of it since—you saw that fence along in front of this tract, did you, in 1898?

A. I seen the fence right here, in front here.

Q. In the fall of 1898?

A. The southwest part of it; yes.

Q. You saw that fence standing in the fall of 1898, the fence along Main Street there, for its full length?

A. Yes; not all of it; they commenced breaking it down and fixing it up and lots of trouble; one day

(Testimony of Solomon Ripinski.)

we will fix the fence and another day it would be all tore down.

Q. You said it was torn down considerably during the rush to Porcupine, I believe?

A. Yes, sir.

Q. Then the breaking down didn't begin until the fall of '98, did it?

A. Yes, sir, fall of '98.

Q. So prior to the fall of 1898, your fence along the front, along Main Street, was nearly all standing?

A. Yes, sir.

Q. During the summer of 1898 it was nearly all standing?

A. That's the time we had the trouble; they tear it down, and that fence down here and down here stood quite a while.

Q. The witness describes the fence along Sixth Avenue and down to Dalton Street. Now, I am calling your attention to that fence along Main Street; that, you say, was standing in the summer of 1898?

A. Yes, sir.

Q. But as soon as the rush was made to the Porcupine, by people going to the Porcupine, it was torn down and destroyed?

A. By jumpers; yes, sir.

Q. But in the summer of 1898 it was practically all standing?

A. We tried, when they break it down anything, to fix it up again.

Q. Answer the question—in the summer of 1898

(Testimony of Solomon Ripinski.)

the fence along Main Street was practically all standing?

A. I don't know all—some of it was.

Q. Well, nearly all of it—in the summer of 1898?

A. Yes, sir.

Q. All right. And it was a two-wire fence?

A. Yes, sir.

Q. Posts set in the ground two or three feet with stones piled around?

A. You mean all of the ground?

Q. No—I say they were set in the ground two or three feet?

A. Well, some of them would be; the balance small trees.

Q. Yes, whenever you could you used a tree, but the posts you set in the ground two or three feet deep?

A. Yes, perhaps a little deeper; I don't know.

Q. Why was there any necessity of building a fence on the south side of your tract—why couldn't you have joined onto the Mission fence?

A. Well, there ought to be a trail so people could walk.

Q. You wanted to leave a trail?

A. Yes, sir.

Q. Did you ever ask the Mission people if they would allow you to join on to their fence?

A. I did not.

Q. There was nobody that had any particular right to a trail as long as you owned the ground?

A. Well, there was always a little trail there.

(Testimony of Solomon Ripinski.)

Q. Well, you owned the ground?

A. Yes, sir.

Q. You had a perfect right to fence it up, didn't you?

A. Well, people have to pass there; I used to want to take a walk there myself.

Q. And to accommodate your desire to take a walk occasionally, and the public, you left a small alley-way between your own ground and the Mission fence?

A. In fact, the natives of the Klukwan, the upper country, used to come down that little trail, and that's really the reason Dickinson only had this strip of ground; he said he wanted his customers coming down here, he didn't have any trade from the other line.

Q. And to accommodate yourself when you wanted to take a walk and also the Indians, you left that alley-way? A. Yes, sir.

Q. But you knew you had a right to fence all of that, because you owned the land?

A. Yes, sir.

Q. You said you sent out a lot of notices of your ownership to the occupants of the town of Haines—when did you send them out?

A. Well, the date's on them.

Q. They haven't been offered in evidence; I don't know what the dates were—it was in the summer of 1903, wasn't it, after you located this place as a homestead? A. Yes.

(Testimony of Solomon Ripinski.)

Q. You didn't send them any written notice prior to that time?

A. I didn't remember, I think.

Q. In fact, you started in at that time to make a case for yourself by sending out registered letters, didn't you?

Objected to as immaterial and irrelevant.

A. I send them notices before, but they said they didn't receive them.

Q. Didn't you state just a moment ago, sir, that the registered letters were the first written notice you had sent—as a matter of fact you never sent them any notices before that, did you?

A. I did.

Q. Did you send notices through the mail before that? A. Yes, sir.

Q. To whom did you send written notices through the mails before 1903?

A. One to Lane.

Q. He isn't here to-day? A. No, sir.

Q. Who else? A. To Campbell.

Q. He isn't here to-day? A. No, sir.

Q. Who else did you send written notice to?

A. Mrs. Campbell.

Q. She isn't here? A. No, sir.

Q. Lane isn't in the country now, is he?

A. No, sir.

Q. Campbell isn't in this country either?

A. No more was the present jumpers in this country neither.

Q. Who else did you send a notice to?

(Testimony of Solomon Ripinski.)

A. I don't know.

Q. Did you send one of those notices to Martin?

A. Yes, sir.

Q. Before this registered notice of 1903?

A. He never had no property there.

Q. He never had property there before the summer of 1903? That is, the time you sent the notices enclosed in registered letters—that was the summer of 1903?

A. Yes, sir; there was one for Martin, I think—

Q. When was it sent to him?

A. When he was building his house.

Q. When was that?

A. The notice will say.

Q. He lived there long prior to 1903, didn't he?

A. He was in Porcupine, if I'm not mistaken.

Q. Do you say Martin wasn't in Haines, occupying that building or place of business before the summer of 1903?

A. Perhaps he was in Mr. Vogel's place.

Q. Then he didn't occupy any premises of his own in Haines prior to 1903?

A. I don't believe.

Q. You didn't send him any notice before 1903, did you? A. He had no property there.

Q. Did you send him any notice prior to 1903 to keep off or not to build any more on that tract?

A. Perhaps he didn't have no land there.

Q. That's not an answer to the question: I asked you if you sent Mr. Martin any notice to quit, or any notice that you claimed that land, prior to 1903?

(Testimony of Solomon Ripinski.)

A. I'm not going to send any person any notice if he isn't on my land, am I?

Q. Did you or did you not send him such notice? Answer, sir!

A. I don't think I did; when he commenced to building I did.

Q. Did you send in a notice to Fay prior to 1903?

A. My brother went to him with a notice.

Q. You sent him a notice through the mail?

A. Yes, sir.

Q. Have you a copy of that notice?

A. Yes, sir.

Q. Now, that was prior to 1903?

A. Yes, sir; that is when he commenced his building.

Q. Let's see it? A. Shall I read it?

Q. Go ahead.

A. "Mr. H. Fay, Haines, Alaska. October 1st, 1904. This is to notify you that Sol. Ripinski claims the land that you are building on at Haines Mission. You are therefore warned not to proceed any further with building on or improving said land. R. W. Jennings, attorney for Sol. Ripinski."

Q. You didn't send him any notice before that?

A. Well, he was building at the time.

Q. Answer the question—you didn't send any notice to Mr. Fay stating that you claimed or owned the premises he was occupying until October 1st, 1904—notwithstanding the fact that you knew he had been there since 1897?

A. I sent one notice by my brother.

(Testimony of Solomon Ripinski.)

Q. Which brother?

A. Gabe—running a store in Haines.

Q. Did you send a notice to Mr. Morrison—

A. Yes, sir.

Q. When?

By Mr. JENNINGS.—Defendant's Exhibits No. 5 and 6 haven't been introduced in evidence—I now offer them. (Marked.)

Q. Well, now, when did you send a notice to Mr. Morrison? A. Shall I read it?

Q. Let's see it—you didn't send him a notice until July, 1903, did you?

A. Until he was building his residence.

Q. Notwithstanding the fact you knew he had been on the premises for three or four years prior to that time, you never sent him any notice that you were claiming that ground—did you?

A. I never knew he claimed the ground.

Q. Did you notify Mr. Adams that you claimed the premises he was on?

Objected to as not cross-examination.

A. I think his house is off the tract.

Q. You knew, sir, that he had a house on that tract—I call your attention now to—

A. I think it is outside of that.

Q. —to Parcel No. 14 in Block No. 1?

A. This is out of that there.

Q. A portion of his lot is on the disputed tract, is it not—you knew he claimed that whole lot?

A. But the improvements is outside.

Q. Hasn't he a fence around that lot, sir?

(Testimony of Solomon Ripinski.)

A. I don't know if he has or not.

Q. Did you ever notify Mr. Creeden—protest against his building on this lot?

A. Well, I personally told him he was on my ground, my brother and myself.

Q. When? A. When he was building.

Q. You and your brother notified Mr. Creeden?

A. Yes, and Mr. Brie and Mrs. Brie.

Q. You testify that you did yourself; you notified them when they were building that they were on your ground? A. Yes, sir.

Q. Now, as a matter of fact, Mr. Ripinski, you knew these people were building and improving that ground and never thought about notifying any of them until 1903 on the advice of your counsel?

A. I notified them before.

Q. You have no evidence of it except your own unsupported word?

A. Of course, they deny it.

Q. You think they will deny it?

A. They generally do, perhaps.

Q. Did you serve any written notice on them and keep a copy of it before 1903?

A. No, I don't think so.

Q. Now, you say the reason you didn't improve this property was, that the jumpers were there and prevented you from doing so—is that right?

A. They got possession of the ground.

Q. And that's the reason you didn't clear the ground—understand me, now—that's the reason why you didn't go ahead and improve that tract?

(Testimony of Solomon Ripinski.)

A. Yes, sir.

Q. Isn't it true that you haven't even cleared all the ground that you are the undisputed owner of down on the beach there?

A. I wanted that for myself.

Q. You haven't cleared it all?

A. I didn't want to clear it; I want to have a little park down there.

Q. Oh, you wanted that for a park; you didn't have any use for a park on the other portion of the premises?

A. That would be too big a park.

Q. That would be too large a park for you would it—what did you expect to run in that park?

A. Cool off when it is warm—go in there and cool off.

Q. There is where you go to cool off when you get hot—oh, you have had two or three suits with these occupants, haven't you, Sol.?

A. Yes, sir.

Q. And they have beaten you both times, both before the jury and the court, haven't they?

Objected to as immaterial, irrelevant and not proper cross-examination.

Q. Isn't that true? A. Yes, sir.

Q. You brought an ejectment suit once in this court against W. W. Warne, Harry Fay, M. W. Lane, E. P. Cronen and others and the jury disagreed with you and decided in favor of the defendants?

(Testimony of Solomon Ripinski.)

Objected to as immaterial and incompetent and the verdict of the jury is the best evidence.

Q. Evidently the jury didn't consider these men jumpers, did they, Sol.?

Objected to for the same reason, and the further reason that it is impossible for this witness to testify what the jury considered.

Q. The jury didn't consider the plaintiffs in that case jumpers, did they?

Objected to on the grounds above given, and defendant's counsel instructs him not to answer the question.

Q. You lost that case, didn't you?

Objected to because the record is the best evidence, if any such evidence is competent or material.

A. Yes, sir.

Q. You also had a case tried down at Juneau in the Commissioner's Court, didn't you?

A. Yes, sir.

Q. And you lost that case didn't you also?

Objected to as immaterial and irrelevant.

A. Yes, sir.

Q. And it was thereafter appealed to the District Court and you also lost out there?

Objected to as incompetent and immaterial and not the best evidence.

Q. You've had a hard time making people in this country believe these plaintiffs are jumpers, haven't you?

Objected to as immaterial and irrelevant.

A. Yes.

(Testimony of Solomon Ripinski.)

Q. They don't agree with you, do they—people don't agree with you when you call these men jumpers?

Objected to as irrelevant, immaterial, and indefinite—some people may agree with him and some may not.

A. Well, some say yes and some say no.

Q. Every time you have got into court so far, the Court has said “no,” hasn't it?

Objected to as irrelevant and immaterial and not the best evidence.

A. In those days I couldn't get no justice, sir.

Q. Now, you won't swear, will you, Mr. Ripinski, that you fenced that ground down there before Mr. Fay and others were on that ground?

A. Yes, sir, I swear to that.

Q. You will swear positively now, that you had that fenced, and the entire tract inclosed, before Mr. Fay was on the ground?

A. Yes, sir.

Q. You stated a while ago in response to a question, that you couldn't swear whether Harry Fay was on the ground on the 14th day of December or not, but that you didn't see him there, and he may have been there—wasn't that your language?

Objected to on the ground the question is put in a shape to purposely confound the witness because you don't state what you mean by that language.

Q. I agree, Mr. Jennings, that your objection is not stated for the purpose of confounding the witness. Now, you heard Harry Fay's testimony that

(Testimony of Solomon Ripinski.)

he located a lot there on the 14th day of December, 1897? A. I did.

Q. You won't swear he didn't locate that lot on that day will you, Mr. Ripinski?

A. He didn't locate it on the ground—perhaps he did in his mind, maybe.

Q. Do you swear positively, sir, that Harry Fay didn't locate a lot in Haines on the 14th day of December, 1897?

A. Perhaps he had the first lot of Dalton's.

Q. I'm asking you about the lot he occupies now?

A. Well, I didn't see it; if it would be there, I would see it.

Q. And you positively swear that he didn't have a tent there and didn't have the corners of his lot marked on the 14th day of December, 1897—you know his location notice is dated December 14th, 1897? A. No.

Q. Didn't you see his location notice offered in evidence here in this case?

A. I didn't see it—where is it?

Q. You didn't make any examination of the records to find out whether he did or not?

A. Well, I have got nothing to do with the records.

Q. You say, now, sir, that you had fenced that tract, inclosed it in a fence, before Harry Fay located his lot in Haines—do you swear to that?

A. I didn't see it—I swear I didn't see it.

Q. But you won't swear that Harry Fay didn't

(Testimony of Solomon Ripinski.)

have his lot marked on the ground at that time, and before you had completed your fence, will you?

A. Well, I didn't see it.

Q. I ask you, sir, if you will positively swear that Harry Fay didn't have the boundaries of his lot marked and his location made before you completed?

A. I didn't see it; I can't tell.

Q. Then you don't know whether he did or not. Now, did you send any notice to Mr. Bjornstad?

A. No.

Q. You knew that he occupied and represented some premises on that tract belonging to himself and his mother, didn't you?

A. He got some property from Campbell, and I sent one to Miss Manning—Mrs. Campbell.

Q. You didn't send any notice to Bjornstad then?

A. No, I sent them to people that had property in the first place and built there.

Q. Did you send any notice to Mr. Weitzman?

A. Weitzman knowed it was my land; he acknowledged that himself—I rented part to him.

Q. Yes, let's get down to that now. You rented to him a tract there that you knew to be a part of the Dalton acre, didn't you?

A. Well, it was part of Dalton's and part of mine.

Q. And as soon as Mr. Weitzman made some arrangement with Mr. Dalton you paid him back the rental money?

A. I didn't paid him back; no.

(Testimony of Solomon Ripinski.)

Q. You heard Mr. Weitzman's testimony, didn't you? A. Yes, sir.

Q. That wasn't true then, that you paid him back the rent? A. Yes, sir.

Q. That was false, was it?

A. If he paid it back to me, I didn't get any money.

Q. No, no; I say you paid it back to him—he testified you paid back to him what you collected when he made the arrangements with Dalton?

A. Not much.

Q. You have never tried to collect any rent from him since?

A. Not since Mrs. Dalton—I made a stipulation with Mrs. Dalton about that.

Q. I say you have never tried to collect any rent from Weitzman since, have you?

A. No, sir.

Q. He still occupies a portion of your premises, don't he? A. Yes, sir.

Q. You never sought to collect any more rent?

A. No.

Q. You know now very well, Mr. Ripinski, that you rented that place to Mr. Weitzman under these circumstances: Mr. Weitzman heard that Mr. Dalton was laying claim to the tract, and you were also laying claim to the tract, and rather than go to the expense of a lawsuit he went to you and asked you if you would sell a tract and you said no, that you would lease it to him—isn't that true?

(Testimony of Solomon Ripinski.)

Objected to on the ground there are a half dozen questions in one, and then at the end is the general question: Isn't that true? A. Yes.

A. Yes.

Q. And then Mrs. Dalton laid claim to the tract and Mr. Weitzman settled with her and he came back and told you he had made a settlement with Mrs. Dalton and made some complaint about your claiming rent from him for a tract you didn't own and you waived all of your claim of rent—isn't that true?

Objected to for the same reason.

Q. That's true also, isn't it?

A. At that day we didn't know which it was, if it was mine or Mrs. Dalton's because Mrs. Dalton she took a broader piece, more than one acre.

Q. You allowed her to take more than an acre then?

A. Well, she sold more than an acre. We made a certain agreement, there was one paper Mrs. Dalton and myself made out of that.

Q. And you think—seriously now, do you feel serious in asking the Court to give you the property that you claim in this suit as against these plaintiffs who have gone on there in good faith and improved it with their money and energy?

Objected to as argumentative, incompetent and irrelevant.

A. Yes, sir.

Q. You think the Court ought to hold you are the owner of that property do you?

(Testimony of Solomon Ripinski.)

Objected to on the ground the question involves the witness' opinion of the merits of his suit when he has already filed an answer setting forth his claim.

Q. Do you think the Court ought to give it to you? A. Yes, sir.

Q. That's the way you feel about it, is it?

A. And I will get it, too.

Q. Oh, you will! You think you will—well, now, you built a fence along the easterly side of Lot No. 1 here, Block 1, as indicated on Plaintiffs' Exhibit No. 1—between that block and your tract of land, didn't you? A. Beg pardon; ask that again.

Q. You have built a fence along the southerly line of Block No. 1, haven't you?

A. Right here, yes, sir; there is a fence there.

Q. You built that fence then, between your own holdings and the holdings of the occupants of Block No. 1? A. Yes, sir.

Q. What did you build that fence for?

A. Some of those people that lived there moved that fence fifteen or twenty feet, the whole business.

Q. What did you build that in there for, in the first place?

A. Because they might come and take the whole business.

Q. You built that fence as a matter of fact, to mark the boundary, the westerly boundary of your holdings and claim, didn't you?

A. No, sir, I claim the whole business.

(Testimony of Solomon Ripinski.)

Q. What did you build that fence for then—why didn't you build it higher up here?

A. Higher—they throw down the fence if I build it higher.

Q. Who—those lot owners? A. Yes.

Q. No part of that fence is standing there to-day?

A. I don't know—I expect not.

Q. When did you build this fence along the southerly or easterly side of Block No. 1?

A. I can't recollect just what time.

Q. Well, what time was it—before, or after you built the other fence? A. After.

Q. How long afterwards?

A. Considerably after, I think.

Q. Well, about how long, Mr. Ripinski?

A. I can't tell just the time.

Q. You built that fence to keep the jumpers from coming in and jumping that portion?

A. Yes, sir.

Q. You never used that portion, excepting to the east of Block No. 1, did you?

A. Yes, sir; they moved that fence in about twenty feet, the whole thing.

Q. You don't mean to say you now occupy any part of Morrison's Hotel, do you?

A. The Morrison Hotel; no.

Q. That line that indicates the easterly boundary of Block 1 is about the dividing line between your Homestead and the lots in Block 1, isn't it?

A. That part you're alluding to is Dalton's acre.

(Testimony of Solomon Ripinski.)

Q. I say that line, the southerly line of Block 1 is the dividing line between your holdings and the lots they are occupying? A. The jumpers?

Q. There are no jumpers in this case, sir—I mean the people who live there; isn't that true?

A. Yes, sir.

Q. And that line is about the line of the fence which divides your holdings from the holdings of the other occupants of Block No. 1?

A. That's right.

Redirect Examination.

By Mr. JENNINGS.—Mr. Ripinski, Mr. Lyons has asked you whether or not the jury has passed on the question as to whether you own this land, one jury at Juneau, and one at Skagway: Do you know whether any lot jumpers were on the jury that tried your case at Juneau? A. Yes, sir.

Q. Any men who had jumped lots in Haines, lots in this very city of Haines—in your suit?

A. Yes, sir, that's right.

Q. Some of the very same lot 9-jumpers who jumped your lots in Haines were on that jury in Juneau? A. Yes, sir, that's correct.

Q. When was the case tried in Skagway, what year was that tried in?

A. I don't remember now.

Q. Well, who was Judge when that was tried?

(Testimony of Solomon Ripinski.)

A. It must be Johnson, I think.

Q. And it was tried at the very time of the rush up here into the Klondike, wasn't it?

A. Yes, sir.

Q. And tried at the very time that Skagway was wrought up over the Captain Moore suits, wasn't it?

A. Yes, sir.

Q. And a great many people were on that jury who had jumped lots of Captain Moore's right here in Skagway?

Objected to as leading, incompetent, and immaterial.

Q. Mr. Ripinski, has your case ever been submitted to a Judge of the law, without a jury?

A. No.

Q. Never have? A. No, sir.

Q. Has any special agent ever come out here from Washington, under special orders from Washington to investigate your claim to this land?

Objected to as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. Who was it—who were they?

Objected to for the same reason.

A. He was Col. Grygla, special agent of the Land Department and one was Judge Witten.

(Testimony of Solomon Ripinski.)

Q. Of the Land Department at Washington?

A. Yes, sir.

Q. Have you ever seen a copy of Judge Witten's report?

Objected to as incompetent, immaterial and irrelevant.

Q. Have you got a copy of that report?

A. I don't know—I might have it.

Q. Mr. Ripinski, did you ever receive a letter from Honorable W. A. Richards, Commissioner of the General Land Office at Washington, dated February 14th, 1905? A. Yes, sir.

Q. I ask the stenographer to mark this letter Defendant's Exhibit No. 13 for identification case No. 547. (Marked.) I now hand you that letter marked for identification No. 13 and ask you where you got that letter?

A. From the Department of the Interior, General Land Office, Washington, D. C.

Q. Where did you get it—who gave it to you—did you get it out of the postoffice?

A. The postoffice; yes.

Q. It came addressed to you in an envelope?

A. Yes, sir.

(Testimony of Solomon Ripinski.)

Q. And was handed to you by Mr. Stout, the postmaster at Haines? A. Yes, sir.

Q. All right. Now, we will offer this letter in evidence.

Objected to for the reason that it is incompetent, irrelevant and immaterial, and expressly states that the Land Office at Washington, under the facts before it is not in a position to decide the case in controversy.

By Mr. JENNINGS.—We offer it for the purpose of showing what the General Land Office has to say with reference to Judge Witten's report to that office; and I would like to remark that it is no more incompetent for us to introduce that than for counsel to ask about jurors and other people taking stock in Ripinski's statement that he is owner of that land. Now, Mr. Ripinski, you have a certified copy of Judge Witten's report, have you?

A. That one I handed you.

Q. That's not a certified copy; merely said to be a copy. You can't swear that is a copy of the report, and so I won't introduce it. Now, Mr. Ripinski, the fence that the Mission people had built on their land, state whether or not it extended the whole length of that trail as far as the land you claim?

A. Yes—no, there is only part of it.

Q. How much of that trail had been fenced by the Mission people at the time you put your fence on the remainder of the trail?

A. I should judge several hundred feet.

(Testimony of Solomon Ripinski.)

Q. Had it been fenced at that time any further than Tim Vogel's by the Mission people?

A. Yes, sir; about that far, I guess.

Q. Now, Mr. Lyons asked you about the Indians that helped you to build that fence, and seemed to be very much surprised and a little incredulous because you couldn't name any living Indian—how long has it been since you built that fence, or helped to build it?

A. Well, since 1897.

Q. Is it an uncommon thing in Alaska for a whole tribe of Indians to be wiped out by an epidemic of small-pox or anything of that kind?

Objected to as irrelevant and immaterial.

A. No, sir.

Q. Now, you stated that in building that fence you strung the wires on posts, dug some post-holes and strung the wires on little tree that had been topped, cut down?

A. Yes, sir.

Q. Do you know whether you dug more holes than you used trees—which did you do the most?

A. The most was the trees in the ground there.

Q. Whenever you found a tree, you had no reason to dig a post-hole there—you used trees where you could?

A. Yes, sir.

Q. Now, Mr. Lyons, seems to have had his risibles excited a good deal about that deed from Mrs. Dickinson to you—are you a lawyer, Mr. Ripinski?

A. No, sir.

Q. Are you a conveyancer? A. No, sir.

Q. Are you an engineer? A. No, sir.

Q. Was there any other notary public anywhere

(Testimony of Solomon Ripinski.)

around in that neighborhood at the time you made that deed?

A. I was the first notary in Alaska—that's what Governor Shakeley told me.

Q. In fact, the first one he had authority to appoint?
A. He told me that.

Q. But you don't know whether or not it was so?

A. Of course not.

Q. I'll ask you if the words written in the margin of that deed—I'll ask you if you wanted to write in those words that are in the margin if you couldn't have written them as well after Mrs. Dickinson signed—as well before as after?

Objected to as immaterial.

A. Yes, sir.

Q. If you wanted to do it—before or after—there was plenty of room, wasn't there?

A. Yes, sir; but that was written before.

Recross-examination.

By Mr. LYONS.—You promised Mr. Weitzman you would give him a deed to his land he owned on this disputed tract after you got title to yours, didn't you?

A. He is the biggest liar, if he'll say that, in the world.

Q. Why, of course—and you say the men who have sat on your juries were all jumpers?

Objected to on the ground that the witness never stated they were all jumpers.

Q. Who were the jumpers on your jury? Name one single one.
A. On what jury?

(Testimony of Solomon Ripinski.)

Q. The jury that sat in Skagway and decided your case, in which you were plaintiff?

A. Any number of them.

Q. Name one—you can't name one, can you?

A. Let me think a little, it is a long time; I know who they were.

Q. Name one of them?

A. They had at that time trouble with Moore.

Q. I didn't ask you about that—I ask you, sir, to name one juror who sat on that jury who was a jumper? Well, if you can't do that, can you name one juror who sat on your jury in Juneau who was a jumper?

Objected to on the ground the witness never stated any of the jurors at Juneau were jumpers.

A. Long Shorty was running around with some powers of attorney to put some claims on that land, the whole of the country.

Q. I asked you what juror sat on your case that was tried at Juneau, who was a jumper?

A. In Juneau?

Q. Yes.

A. Well, in Juneau the people had trouble with Goldstein—

Q. Now, Mr. Ripinski, don't evade the question: You said they were jumpers on your jury there—what juror who went on your case was a jumper?

A. There was a plat made, Lane had a plat and there was one of the lots of one of the men went on my jury.

